

**List of Subjects in 40 CFR Part 70**

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 27, 2001.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

**PART 70—[AMENDED]**

1. The authority citation for part 70 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. Appendix A to part 70 is amended by revising paragraph (b) in the entry for Virginia to read as follows:

**Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs**

\* \* \* \* \*

**Virginia**

(b) The Virginia Department of Environmental Quality submitted operating permit program amendments on November 20, 2000. The rule revisions contained in the November 20, 2000 submittal adequately addressed the conditions of the interim approval effective on March 12, 1998. The Commonwealth is hereby granted final full approval effective on November 30, 2001. [FR Doc. 01–29961 Filed 12–3–01; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 70**

[FRL–7111–7]

**Clean Air Act Final Full Approval of the Operating Permits Program; Minnesota**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to fully approve the operating permits program submitted by the State of Minnesota. Minnesota submitted its operating permits program in response to the directive in the 1990 Clean Air Act Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authority's jurisdiction.

**EFFECTIVE DATE:** The effective date of this action is November 30, 2001.

**ADDRESSES:** Copies of the state's submittal and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604. Please contact Robert Miller at (312) 353–0396 to arrange a time if inspection of the submittal is desired.

**FOR FURTHER INFORMATION CONTACT:**

Rachel Rineheart, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886–7017, E-Mail Address: rineheart.rachel@epa.gov.

**SUPPLEMENTARY INFORMATION:** This section provides additional information by addressing the following questions:

What is being addressed in this document?  
What is involved in this final action?

**What Is Being Addressed in This Document?**

As required under Subchapter V of the Clean Air Act ("the Act"), EPA has promulgated regulations which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Subchapter V, generally known as title V, states developed, and submitted to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The EPA's program review occurs under section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, met the requirements of part 70, EPA granted the program interim approval. If EPA has not fully approved a program by the expiration of an interim program, it must establish and implement a federal program.

The Minnesota Pollution Control Agency (MPCA) submitted its title V operating permits program (title V program) for approval on November 15, 1993. EPA promulgated interim approval of the Minnesota title V program on June 16, 1995 (60 FR 31637), and the program became effective on July 16, 1995. Subsequently, EPA extended Minnesota's title V interim approval period on several occasions, most recently to December 1, 2001 (65 FR 32036).

MPCA submitted amendments to its title V program for our approval on June 9, 2000, July 21, 2000, and June 12, 2001. Minnesota intended these amendments to correct interim approval issues identified in the June 16, 1995, action. Based on this submittal, EPA proposed full approval for the Minnesota title V program on October 30, 2001 (66 FR 54739). EPA did not receive any adverse public comment(s) on the proposal; therefore, EPA is taking final action to give full approval to the Minnesota title V program.

**What Is Involved in This Final Action?**

The EPA is granting full approval of the operating permits program submitted by MPCA based on the interim approval corrections submitted on June 9, 2000, July 21, 2000, and June 12, 2001. These revisions satisfactorily address the program deficiencies identified in EPA's June 16, 1995, interim approval rulemaking.

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group. In settling the litigation, EPA agreed to publish a notice in the **Federal Register**, so that the public would have the opportunity to identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs. In turn, EPA would respond to the public's allegations within specified time periods, if the comments were made within 90 days of publication of the **Federal Register** notice.

The EPA received one timely comment letter pertaining to the Minnesota title V program. As stated in the **Federal Register** notice published on October 30, 2001 proposing to fully approve Minnesota's operating permit program, EPA takes no action on those comments in today's action. Rather, EPA expects to respond by December 1, 2001 to timely public comments on programs that have obtained interim approval, and by April 1, 2002 to timely comments on fully approved programs. The EPA will publish a notice of deficiency (NOD) if EPA determines that a deficiency exists, or will notify the commenter in writing to explain the reasons for not making a finding of deficiency. EPA Region 5 will also post its response letters on the Internet at <http://yosemite.epa.gov/r5/ardcorres.nsf/title+V+Program+Comments>. EPA Region 5 includes the states of Michigan, Minnesota, Illinois, Indiana, Ohio, and Wisconsin. The EPA will also

be posting all response letters on the national EPA website, and the Agency will publish a **Federal Register** notice of the availability of those response letters.

### Administrative Requirements

#### A. What Are the Administrative Requirements for This Action?

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this final approval is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain an unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have federalism implications because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the federal government established in the Act.

This final approval is also not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060-0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing state operating permit programs submitted pursuant to title V of the Act, EPA will approve state programs provided that they meet the requirements of the Act and EPA's regulations codified at 40 CFR part 70. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a state operating permit program for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a state program that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective November 30, 2001.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act.)

#### B. What Is the Effective Date of EPA's Full Approval of Minnesota's Title V Program?

EPA's approval of Minnesota's title V program is effective on November 30, 2001. Pursuant to section 502(h) of the Act, the effective date of a permitting program approved under title V is the date of approval by the Administrator or her delegatee. Furthermore, the good cause exception under the Administrative Procedure Act (APA) allows EPA to make the full approval of the state's program immediately effective. In relevant part, the APA provides that publication of "a substantive rule shall be made not less than 30 days before its effective date, except—\* \* \* (3) as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. § 553(d)(3). Section 553(b)(3)(B) of the APA provides that good cause may be supported by an agency determination that a delay in the effective date is impracticable, unnecessary, or contrary to the public interest. The EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take effect before December 1, 2001. The EPA's interim approval of Minnesota's prior program expires on December 1, 2001. In the absence of this full approval of Minnesota's amended program taking effect on November 30, the federal program under 40 CFR part 71 would automatically take effect in Minnesota and would remain in place until the effective date of the fully-approved state program. The EPA believes it is in the public interest for sources, the public and Minnesota to avoid any gap in coverage of the state program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because MPCA has been administering the title

V permit program for more than six years under an interim approval. Through this action, EPA is approving a few revisions to the existing and currently operational program. The change from the interim approved program which substantially met the part 70 requirements, to the fully approved program is relatively minor, in particular if compared to the changes between a state-established and administered program and the federal program.

### *C. What Is the Scope of EPA's Full Approval?*

In its program submission, Minnesota did not assert jurisdiction over Indian country. To date, no tribal government in Minnesota has applied to EPA for approval to administer a title V program in Indian country within the state. EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may be approved by EPA to implement a title V program on Indian reservations and in non-reservation areas over which the tribe has jurisdiction. EPA's part 71 regulations govern the issuance of federal operating permits in Indian country. EPA's authority to issue permits in Indian country was challenged in *Michigan v. EPA*, (D.C. Cir. No. 99-1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. EPA will respond to the court's remand and explain EPA's approach for further implementation of part 71 in Indian country in a future action.

### **List of Subjects in Part 70**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: November 27, 2001.

**Thomas V. Skinner,**  
*Regional Administrator, Region V.*

40 CFR part 70 is amended as follows:

### **PART 70—[AMENDED]**

1. The authority citation for part 70 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. Appendix A to part 70 is amended by revising the entry for Minnesota to read as follows:

### **Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs**

\* \* \* \* \*

#### **Minnesota**

(a) The Minnesota Pollution Control Agency: submitted on November 15, 1993; interim approval effective on July 16, 1995; interim approval expires December 1, 2001.

(b) The Minnesota Pollution Control Agency: Program revisions submitted on June 9, 2000, July 21, 2000, June 12, 2001; Rule revisions contained in the submittals adequately addressed the conditions of the interim approval which expires on December 1, 2001. Minnesota is hereby granted final full approval effective November 30, 2001.

(c) [Reserved]

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[FR Doc. 01-29963 Filed 12-3-01; 8:45 am]

**BILLING CODE 6560-50-P**

### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 70**

[IN003; FRL-7111-9]

#### **Clean Air Act Final Full Approval of the Operating Permits Program; Indiana**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to fully approve the operating permits program submitted by the State of Indiana. Indiana submitted its operating permits program in response to the directive in the 1990 Clean Air Act Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authority's jurisdiction.

**EFFECTIVE DATE:** The effective date of this action is November 30, 2001.

**ADDRESSES:** Copies of the state's submittal and other supporting information used in developing the proposed approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR-18J, Chicago, Illinois 60604. Please contact Sam Portanova at (312) 886-3189 to arrange a time if inspection of the submittal is desired.

**FOR FURTHER INFORMATION CONTACT:** Sam Portanova, AR-18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886-3189, E-Mail Address: [portanova.sam@epa.gov](mailto:portanova.sam@epa.gov).

**SUPPLEMENTARY INFORMATION:** This section provides additional information by addressing the following questions:

What is being addressed in this document?  
Response to comments.  
What is involved in this final action?

### **What Is Being Addressed in This Document?**

As required under Subchapter V of the Clean Air Act ("the Act"), as amended (1990), EPA has promulgated regulations which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Subchapter V, generally known as title V, states developed, and submitted to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The EPA's program review occurs under section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA granted the program interim approval. If EPA has not fully approved a program by the expiration of an interim program, it must establish and implement a federal program.

The Indiana Department of Environmental Management (IDEM) submitted its title V operating permits program (title V program) for approval on August 10, 1994. EPA promulgated interim approval of the Indiana title V program on November 14, 1995 (60 FR 57188), and the program became effective on December 14, 1995. Subsequently, EPA extended Indiana's title V interim approval period on several occasions, most recently to December 1, 2001 (65 FR 32036).

IDEM submitted amendments to its title V program for our approval on May 22, 1996. Indiana intended these amendments to correct interim approval issues identified in the November 14, 1995, action. Based on this submittal, EPA proposed full approval for the Indiana title V program on July 30, 2001 (66 FR 39293). EPA received one adverse public comment on the proposal. After carefully reviewing and considering the issues raised by the commenter, EPA is taking final action to give full approval to the Indiana title V program.

### **Response to Comments**

The comment that EPA received in response to our July 30, 2001, proposal