

§ 240.6 Reclamation of amounts of paid checks.

(a) If Treasury determines that a check has been paid over a forged or unauthorized indorsement, or that a check containing a material defect or alteration is deemed paid under § 240.3, the presenting bank or any other indorser shall be liable to the Treasury for the full amount of the check payment. The Commissioner may reclaim the amount of the check payment from the presenting bank, or from any other indorser that breached its guaranty of indorsement prior to:

(1) The end of the 1-year period beginning on the date of provisional payment; or

(2) The expiration of the 180-day period beginning on the close of the period described in paragraph (a)(1) of this section if a timely claim under 31 U.S.C. 3702 is presented to the certifying agency.

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6. Section 240.9 is amended by revising paragraphs (a)(1) and (a)(3) (ii) and (iv) to read as follows:

§ 240.9 Processing of checks.

(a) *Federal Reserve Banks.* (1) Federal Reserve Banks shall cash checks for Government disbursing officers when such checks are drawn by the disbursing officers to their own order. Payment of such checks shall not be refused except for material defect or alteration of the check.

(2) * * *

(3) * * *

(ii) Give immediate provisional credit therefor in accordance with their current Time Schedules and charge the amount of the checks cashed or otherwise received to the account of the Treasury, subject to first examination and payment by Treasury.

(iii) * * *

(iv) Release the original checks to a designated Federal Records Center upon notification from Treasury. Treasury shall return to the forwarding Federal Reserve Bank a copy of any check the payment of which is declined upon the completion of first examination, together with notice of the declination. Federal Reserve Banks shall give immediate credit therefor in Treasury's account, thereby reversing the previous charge to the account for such check. Treasury authorizes each Federal Reserve Bank to release a copy of the check to the indorser when payment is declined.

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7. Section 240.13 is amended by adding paragraph (c) to read as follows:

§ 240.13 Checks issued to deceased payees.

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(c) *Deceased payee check intercepts.*

(1) A benefit payment check, issued after a payee's death, is not payable. When a certifying agency learns that a payee has died, the certifying agency shall give immediate notice to Treasury. Upon receipt of such notice, Treasury will instruct the Federal Reserve Bank to refuse payment on the check upon presentment. The Federal Reserve Bank will make every appropriate effort to intercept the check. Where a check is successfully intercepted, the Federal Reserve bank will refuse payment, and return the check unpaid to the bank with an annotation that the payee is deceased. Where a financial institution learns that a date of death triggering action under this section is erroneous, the appropriate certifying agency which authorized the issuance of the check should be contacted.

(2) Nothing in this section shall limit the right of Treasury to institute reclamation proceedings under the provisions of § 240.6 with respect to a deceased payee check paid over a forged or unauthorized indorsement.

8. Section 240.16 is added to read as follows:

§ 240.16 Lack of authority to shift liability.

(a) This part neither authorizes nor directs a bank to debit the account of any party or to deposit any funds from any account in a suspense account or escrow account or the equivalent. However, nothing in this part shall be construed to affect a bank's contract with its depositor(s) under authority of State law.

(b) A bank's liability under this part is not affected by any action taken by it to recover from any party the amount of the bank's liability to the Treasury.

9. Section 240.17 is added to read as follows:

§ 240.17 Implementing instructions.

Procedural instructions implementing the regulations in this part will be issued by the Commissioner of the Financial Management Service in volume I, part 4 and volume II, part 4 of the Treasury Financial Manual.

Dated: July 14, 1995.

Russell D. Morris,

Commissioner.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[SD-001; FRL-5300-8]

Clean Air Act Proposed Full Approval of Operating Permits Program; State of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: The EPA proposes to change the existing interim approval of the Operating Permits Program submitted by the State of South Dakota to a full approval for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by October 23, 1995.

ADDRESSES: Comments should be addressed to the contact indicated below. Copies of the State's submittal and other supporting information used in developing this proposed approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, 8ART-AP, U.S. Environmental Protection Agency, Region 8, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294-7539.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act ("the Act")), EPA has promulgated rules 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 rules are codified at 40 Code of Federal Regulations (CFR) part 70 (part 70). Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to

approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to 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 may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of State Submission

The Governor of South Dakota's designee, Robert E. Roberts, Secretary of the Department of Environment and Natural Resources, submitted the State of South Dakota Title V Operating Permit Program (PROGRAM) to EPA on November 12, 1993. On March 22, 1995, EPA published a Federal Register notice promulgating final interim approval of the South Dakota PROGRAM. See 60 FR 15066. Full approval of the South Dakota PROGRAM was not possible at that time due to the following issue identified during EPA's PROGRAM review: The State's criminal enforcement statute only allowed for a maximum penalty of \$1,000 for failure to obtain a permit and \$500 for violation of a permit condition. The State was required to adopt legislation consistent with part 70.11, prior to receiving full PROGRAM approval, to allow for a maximum criminal fine of not less than \$10,000 per day per violation for knowing violation of operating permit requirements, including making a false statement and tampering with a monitoring device. In a letter dated April 21, 1995, the State submitted evidence that this corrective action had been completed, which EPA has reviewed and has determined to be adequate to allow for full PROGRAM approval. This corrective action included the adoption of Senate Bill 36 by the South Dakota Legislature which contains the necessary language to allow for criminal penalties consistent with part 70.11.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of the provisions of 40 CFR part 63, Subpart A, and section 112 standards promulgated by EPA. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious

compliance schedule, which are also requirements under part 70. EPA granted approval of the State's PROGRAM, under section 112(l)(5) and 40 CFR part 63.91, for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated for part 70 sources in the Federal Register notice promulgating final interim approval of the South Dakota PROGRAM. See 60 FR 15066. Based on a State request, EPA is proposing to expand this approval to include non-part 70 sources. EPA believes this is warranted because State law does not differentiate between part 70 and non-part 70 sources for purposes of implementation and enforcement of section 112 standards that the State adopts. This approval would not delegate authority to the State to enforce specific section 112 standards, but instead would establish a basis for the State to request and receive future delegation of authority to implement and enforce, for non-part 70 sources, section 112 standards that the State adopts without change.

The scope of the PROGRAM and all of the clarifications made in the Federal Register notice proposing interim approval of the South Dakota PROGRAM still apply. See 60 FR 2917.

B. Proposed Action

EPA is proposing to change the existing interim approval of the operating permits program submitted to EPA by the State of South Dakota on November 12, 1993 to a full approval. Among other things, South Dakota has demonstrated that the PROGRAM will be adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70. EPA is also proposing to expand approval of South Dakota's PROGRAM for receiving delegation of section 112 standards to include non-part 70 sources.

Today's proposal to give full approval to the State's part 70 PROGRAM does not extend to "Indian Country," as defined in 18 U.S.C. 1151, including the following "existing or former" Indian reservations in the State: 1. Cheyenne River; 2. Crow Creek; 3. Flandreau; 4. Lower Brule; 5. Pine Ridge; 6. Rosebud; 7. Sisseton; 8. Standing Rock; and 9. Yankton.

The State has asserted it has jurisdiction to enforce a part 70 PROGRAM within some or all of these "existing or former" Indian reservations and has provided an analysis of such jurisdiction. EPA is in the process of evaluating the State's analysis and will issue a supplemental notice regarding this issue in the future. Before EPA

would approve the State's part 70 PROGRAM for any portion of "Indian Country," EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice. This is a complex and controversial issue, and EPA does not wish to delay full approval of the State's part 70 PROGRAM with respect to undisputed sources while EPA resolves this question.

In deferring final action on program approval for sources located in "Indian Country," EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. Instead, EPA is deferring judgment regarding this issue pending EPA's evaluation of the State's analysis.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed full approval. Copies of the State's submittal and other information relied upon for this proposed approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of these proposed approvals. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by October 23, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this proposed approval does not include a Federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR 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: September 11, 1995.

Jack W. McGraw,

Acting Regional Administrator.

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40 CFR Part 70

[AD-FRL-5300-5]

Title V Clean Air Act Proposed Interim Approval of Operating Permits Program; State of Delaware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Interim Approval.

SUMMARY: EPA is proposing interim approval of the operating permits program submitted by the State of Delaware. This program was submitted by the State for the purpose of complying with federal requirements which mandate that states develop, and submit to EPA, programs for issuing

operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by October 23, 1995.

ADDRESSES: Comments should be addressed to Robin M. Moran, (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

Copies of the State of Delaware's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Robin M. Moran, (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597-3023.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

As required under Title V of the Clean Air Act (CAA) as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250, July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources. Due to pending litigation over several aspects of the Part 70 rule which was promulgated on July 21, 1992, Part 70 is in the process of being revised. When the final revisions to Part 70 are promulgated, the requirements of the revised Part 70 will define EPA's criteria for the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits program submittals. Until the date which the revisions to Part 70 are promulgated, the currently effective July 21, 1992 version of Part 70 shall be used as the basis for EPA review.

B. Federal Oversight and Sanctions

The CAA requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the CAA and Part 70, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, EPA must establish and implement a federal operating permits program.

Following final interim approval, if the State fails to submit a complete corrective program for full approval by 6 months before the interim approval period expires, EPA would start an 18-month clock for mandatory sanctions. If the State then failed to submit a complete corrective program before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the CAA. Such a sanction would remain in effect until EPA determined that the State had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In any case, if, six months after application of the first sanction, the State still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove the State's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State had submitted a revised program and EPA had determined that this program corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In all cases, if, six months after EPA applied the first sanction, the State had not submitted a revised program that EPA had determined corrected the deficiencies that prompted