

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 70

[FRL-5833-4]

Operating Permits Program

Notice of Availability of Draft Rules and Accompanying Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The EPA has placed in the docket for public review and comment a draft of the regulations and accompanying preamble that would revise the operating permits regulations in part 70 of chapter I, title 40, of the Code of Federal Regulations, and requirements for "minor" new source review (NSR) permitting in part 51 of chapter I, title 40, of the Code of Federal Regulations. Revisions to part 70 were proposed on August 29, 1994 and August 31, 1995, and revisions to part 51 were proposed on August 31, 1995. The draft placed in the docket reflects EPA's consideration of comments on the 1994 and 1995 proposals and contains additional proposed regulatory revisions and accompanying preamble discussion on some aspects of parts 70 and 51 in response to those comments, in particular the procedures for "minor permit revisions." The draft placed in the docket is styled as a draft "final" rule because EPA does not anticipate substantial additional changes. However, EPA is accepting comments on revisions to the draft final rule that have changed since the earlier proposals. The Agency also has placed in the docket a memorandum of options relating to "minor permit revisions" that EPA is still considering for the final rule. The EPA is also accepting comment on these options.

DATES: Comments on the draft notice must be received by July 3, 1997.

ADDRESSES: The draft notice and accompanying information is available

in EPA's Air Docket number A-93-50 as items VI-A-1, VI-A-2, and VI-A-3. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the address listed below. A reasonable fee may be charged for copying. The address of the EPA air docket is: EPA Air Docket (LE-131), Attention: Docket Number A-93-50, Room M-1500, Waterside Mall, 401 M Street SW, Washington, DC, 20460.

The draft notice and accompanying information may also be downloaded from the Internet at: <http://134.67.104.12/html/caaa/t5pg.htm>.

Comments on the materials referenced in today's notice must be mailed (in duplicate if possible) to: EPA Air Docket (LE-131), Attention: Docket No. A-93-50, at the above address. Please identify comments as pertaining to today's notice of availability of items VI-A-1, VI-A-2, and VI-A-3.

FOR FURTHER INFORMATION CONTACT: Ray Vogel (telephone 919-541-3153) or Roger Powell (telephone 919-541-5331), Mail Drop 12, EPA, Information Transfer and Program Integration Division, Research Triangle Park, North Carolina, 27711. Internet addresses are: vogel.ray@epamail.epa.gov and powell.roger@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The part 70 regulations were originally promulgated on July 21, 1992 (57 FR 32250). Revisions to part 70 were proposed on August 29, 1994 (59 FR 44460). Revisions to parts 51 and 70 were proposed on August 31, 1995 (60 FR 45530). Due to the length of time that has passed since the proposal notices, EPA has received numerous inquiries about the Agency's intended final action on those proposals. The Agency is making the draft notice available both for informational purposes and for purposes of considering any final comments from interested parties on the part 51 and part 70 revisions prior to final action.

Following EPA review of any additional comments on these materials, the Agency will prepare and publish a final rule that will constitute final action on the proposed revisions to parts 70 and 51.

As noted above, the draft notice reflects EPA's consideration of previously submitted comments, and includes further additional regulatory changes that might be finally adopted,

along with accompanying preamble discussion. The EPA seeks comment only on revisions and options in materials referenced in today's notice that have changed since the earlier proposals, including in particular the following issues:

(1) The provisions for minor permit revisions; review by EPA, affected States, and the public; and eligibility criteria for de minimis permit revisions;

(2) The definition of potential to emit, in response to the vacatur and remand of the definition in *Clean Air Implementation Project, et al. v. EPA* following petitioners' challenge to the definition's Federal enforceability requirement;

(3) The absence of a mandate for emissions cap permits, including plantwide applicability limits and advance new source review, as a minimum element of State part 70 programs; and

(4) Review of EPA's interpretation of the collocation procedures for part 70 major sources as applied to unlisted sources of fugitive emissions.

With respect to this last issue, section 501 of the Clean Air Act states that a major source for purposes of title V includes any source that is a "major stationary source" as defined in section 302 or part D of title I. In defining a major source in the original part 70 rulemaking, EPA accordingly looked to the definitions of major sources in section 302 and part D of title I, with particular focus on the approach followed by EPA in the NSR program as a result of the *Alabama Power* litigation. The EPA concluded that aggregating sources by standard industrial classification (SIC) code at the source site to determine whether a source would be major is the approach intended by Congress (56 FR 21712, 21724). The EPA further concluded that aggregation by SIC code should be done in a manner consistent with established NSR procedures, including application of the collocation rules. The collocation rules applicable to NSR were promulgated on August 7, 1980 (45 FR 52695) and further clarified on November 28, 1989 (54 FR 48870).

The National Mining Association (formerly the American Mining Congress) and the American Forest and Paper Association petitioned for review of the original part 70 rule, in part, because of the Agency's interpretation

that the part 70 major source definition must encompass the established NSR collocation provisions. In particular, the petitioners asserted that the Agency's interpretation of its part 70 collocation provisions would have the effect of subjecting unlisted sources of fugitive emissions to part 70 without undertaking a section 302(j) rulemaking. While not conceding the merits of the petitioners' arguments, EPA sought and received from the United States Court of Appeals for the District of Columbia Circuit a voluntary remand in early 1995 to allow the Agency to reconsider its interpretation.¹ The Agency concluded that one aspect of that reconsideration should include review of whether application of the NSR approach to unlisted sources of fugitive emissions is appropriate for title V purposes.

Prior to the voluntary remand, EPA had clarified its decision to apply the NSR approach to major source determinations for purposes of title V in its August 1994 notice of proposed rulemaking revising the part 70 regulations. Specifically, EPA proposed to amend the definition of major source to make clear that the support facility test applied in NSR also applied in determining the scope of a source for title V. Several industry commenters expressed opposition to including the support facility concept in part 70 source determinations, while several State and local governments generally supported the clarification of the major source definition.

In responding to comments regarding the support facility test, it became apparent to EPA that the issue of whether the NSR approach should be applied to unlisted sources of fugitive emissions is closely connected with the more fundamental question of whether it is appropriate to apply the NSR approach (including the support facility concept) in part 70 source determinations generally. The Agency accordingly has reviewed the questions raised in the petitioners' challenge of the original part 70 regulations of whether the support facility test should be applied to unlisted sources of fugitive emissions or whether such sources constitute a special case requiring a 302(j) rulemaking. The EPA

¹ At the time of the remand, EPA anticipated that the relevant issues would be addressed in a new rulemaking. However, in comments submitted with respect to the supplemental proposal to amend the part 70 regulations (60 FR 45530, August 31, 1995), the National Mining Association requested that EPA clarify in the preamble to the final regulations the terms of the voluntary remand. The EPA now has determined that the current part 70 rulemaking is an appropriate vehicle for addressing all collocation issues that were the subject of the litigation.

has also reviewed the broader question of whether EPA's approach to the collocation issues as applied to unlisted sources of fugitive emissions should be consistent with the Agency's approach in NSR. As explained in the draft part 70 preamble referenced herein, the Agency has determined at this time that in making major source determinations under title V, it is appropriate to apply the NSR approach and that there is no basis for excluding unlisted sources of fugitive emissions from this general approach.

Dated: May 22, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97-14443 Filed 6-2-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX No. PA-4058b; FRL-5832-4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NO_x RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of establishing volatile organic compound (VOC) and nitrogen oxides (NO_x) reasonably available control technology (RACT) for five major sources located in Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the accompanying technical support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

If adverse comments are received that do not pertain to all documents subject to this rulemaking action, those documents not affected by the adverse comments will be finalized in the manner described here. Only those documents that receive adverse comments will be withdrawn in the manner described here.

DATES: Comments must be received in writing by July 3, 1997.

ADDRESSES: Written comments on this action should be addressed to David Campbell, Air, Radiation, and Toxics Division, Mailcode 3AT22, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: David Campbell, (215) 566-2196, at the EPA Region III office or via e-mail at campbell.dave@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: See the information pertaining to this action, VOC and NO_x RACT determinations for individual sources located in Pennsylvania, provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: May 19, 1997.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 97-14440 Filed 6-2-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN67-1b; FRL-5827-4]

Approval and Promulgation of State Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to approve a State