ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA 049–OPP; FRL–7087–5]

Clean Air Act Proposed Full Approval of Operating Permit Program; San Diego County Air Pollution Control District, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the operating permit program of the San Diego County Air Pollution Control District (''San Diego'' or ''District''). The San Diego operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) 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 authorities' jurisdiction. EPA granted interim approval to the San Diego operating permit program on December 7, 1995 but listed conditions that San Diego's program would be required to meet for full approval. San Diego has revised its program to satisfy the conditions of the interim approval. Thus, this action proposes full approval of the San Diego operating permit program as a result of those revisions.

DATES: Comments on the program full approval discussed in this proposed action must be received in writing by November 19, 2001.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Acting Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. You can inspect copies of the San Diego's submittals, and other supporting documentation relevant to this action, during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105.

You may also see copies of the submitted Title V program at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

The San Diego Air Pollution Control District, 9150 Chesapeake Drive, San Diego, California 92123–1096.

An electronic copy of SDCAPCD's title V rule, Regulation XIV may be available via the Internet at *http://www.arb.ca.gov/drdb/sd/cur.htm.* However, the version of District Regulation XIV at the above internet address may be different from the version submitted to EPA for approval. Readers are cautioned to verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval. The official submittal is available only at the three addresses listed above.

FOR FURTHER INFORMATION CONTACT: David Wampler, EPA Region IX, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 744–1256.

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

I. What Is the Operating Permit Program?

The CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain Federal criteria. In implementing the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as ''serious,'' major sources include those with the potential of emitting 50 tons per year or more of volatile organic compounds or nitrogen oxides.

II. What Is Being Addressed in This Document?

Where an operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the District revising its program to correct any deficiencies. Because the San Diego operating permit program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to its program in a rulemaking published on December 7, 1995 (60 FR 62753). The interim approval notice described the conditions that had to be met in order for the San Diego program to receive full approval. Since that time, the California Air Resources Board, on behalf of the San Diego has submitted one revision to the San Diego's interimly approved operating permit program; this revision is dated June 4, 2001. This **Federal Register** notice describes the changes that have been made to the San Diego operating permit program since interim approval was granted.

III. Are There Other Issues With the Program?

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 (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice.

EPA received a comment letter from one organization on what they believe to be deficiencies with respect to Title V programs in California. EPA takes no action on those comments in today's action and will respond to them by

December 1, 2001. As stated in the **Federal Register** notice published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. A NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

IV. What Are the Program Changes That EPA Is Proposing To Approve?

As explained in the December 7, 1995 [60 FR 62753] rulemaking, full approval of the San Diego operating permit program required satisfaction of the following conditions:

Issue (1): One of EPA's conditions for full title V program approval was the California Legislature's revision of the Health and Safety Code to eliminate the provision that exempts ''any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals'' from the requirement to obtain a permit. *See* California Health and Safety Code section 42310(e). Even though the local Districts have, in many cases, removed the title V exemption for agricultural sources from their own rules, the Health and Safety Code has not been revised to eliminate this provision.

In evaluating the impact of the Health and Safety Code exemption, EPA believes there are a couple of key factors to consider. First, many post-harvest activities are not covered by the exemption and, thus, are still subject to title V permitting. For example, according to the California Air Resources Board (CARB), the Health and Safety Code exemption does not include activities such as milling and crushing, or canning or cotton ginning operations. Activities such as these are subject to review under the State's title V programs. *See* letter from Michael P. Kenny, Executive Officer, California Air Resources Board, to Jack Broadbent, Director, Air Division, U.S. EPA Region 9, dated September 19, 2001. In addition, since the granting of interim approval, the EPA has discovered that, in general, there is not a reliable or complete inventory of emissions associated with agricultural operations in California that are subject to the exemption. Although further research on this issue is needed, many sources with activities covered by the exemption may not have emission levels that would subject them to title V, and the State and/or individual Districts may be able to demonstrate that none of the sources that are exempt under the State law are subject to title V.

Based, in part, on these factors, EPA has tentatively concluded that requiring the immediate commencement of title V permitting of the limited types of agricultural activities presently subject to the exemption, without a better understanding of the sources and their emissions, would not be an appropriate utilization of limited local, state and federal resources. As a result, despite the State of California's failure to eliminate the agricultural permitting exemption, EPA is proposing to grant full approval to local Air District operating permit programs and allow a deferral of title V permitting of agricultural operations involved in the growing of crops or the raising of fowl or animals for a further brief period, not to exceed three years. During the deferral period, we expect to develop the program infrastructure and experience necessary for effective implementation of the title V permitting program to this limited category of sources.

EPA believes it is appropriate to defer permitting for this limited category of agricultural sources because the currently available techniques for determining emissions inventories and for monitoring emissions (e.g., from irrigation pumps and feeding operations) are problematic and will be dramatically enhanced by several efforts currently being undertaken with the cooperation and participation of the operators and agricultural organizations, as well as EPA, other Federal agencies, and the State and local air pollution agencies. For example, the National Academy of Sciences is undertaking a study addressing emissions from animal feeding operations. Their report is due next year. In addition, EPA's Office of Air and Radiation is working with the U.S. Department of Agriculture to better address the impact of agricultural operations on air quality. We consider the effort to evaluate the existing science, improve on assessment tools, collect additional data, remove any remaining legal obstacles, and issue any necessary guidance within the three year deferral time frame to be ambitious. We welcome comments on other areas that might also warrant study, as well as ways that this work might be done more quickly.

During the interim deferral period, EPA will continue to work with the agricultural industry and our state and federal regulatory partners to pursue, wherever possible, voluntary emission reduction strategies. At the end of this period, EPA will, taking into consideration the results of these studies, make a determination as to how the title V operating permit program will be implemented for any potential major agricultural stationary sources.

Rule or Program Change: San Diego amended its program to require agricultural operations to obtain Title V operating permits when state law is revised.

Issue (2): San Diego was required to revise Rule 1401(c)(43) definition of ''Significant Permit Modification,'' to be consistent with Part 70 which requires that any significant change in monitoring permit terms or conditions be processed as a significant permit modification.

Rule Change: San Diego met this condition by amending the definition of ''significant permit modification'' at Regulation XIV, Rule 1401(c)(44) to include a ''significant change in existing monitoring permit terms or conditions or relaxation to monitoring, recordkeeping, or reporting requirements; or * * *'' See 40 CFR 70.7(e)(4).

Issue (3): San Diego was required to define affected state or, because of its cooperative agreement with Native American Tribes, EPA would accept a commitment from San Diego to: (1) Initiate rule revisions upon notification from EPA that an affected tribe has applied for state status; and (2) provide affected state notice to tribes upon a tribe's filing for state status, that is, prior to the District's adoption of affected state notice rules. See 40 CFR 70.2 and 70.8(b)(1).

Rule Change: San Diego met this requirement by revising its rule to define affected state at Rule 1401(c)(5) to mean: ''any state that: (i) Is contiguous with California and whose air quality may be affected by a permit action, or (ii) is within 50 miles of the source for which a permit action is being proposed. For purposes of this rule affected state includes any federally recognized Eligible Indian Tribe.'' In addition, Rule 1415 was amended to require affected states be notified by the APCO at least 45 days prior to issuance of a five year initial permit to operate, a revised permit resulting from an application for significant modification or renewal of such a permit.

Issue (4): San Diego was required to revise Rule 1410(h)(7), paragraph 2 to require permit reopening procedures for any inactive status permit that is modified to reflect new applicable requirements upon being converted to

active status if there are 3 years or more remaining on the term of its 5-year permit. See 40 CFR 70.7(f)(1)(i).

Rule Change: San Diego met this condition by deleting, in its entirety, subsection (7) of rule 1410. The rule, therefore, no longer allows inactive status permits to be reactivated.

Issue (5): San Diego was required to remove any activities from the District's list of insignificant activities that are subject to a unit-specific applicable requirement and adjust/add size cut-offs to ensure that the listed activities are truly insignificant. See 40 CFR 70.4(b)(2) and 70.5(c).

Rule Change: San Diego met this condition by revising its list of insignificant activities to remove activities (or impose size limits on units) that were subject to any unit-specific applicable requirements (e.g., refrigeration units are now limited to a charge of less than 50 pounds of a Class I or II ozone depleting compound). San Diego also included a justification as to why certain emission units are included in the insignificant activities list. San Diego's justification relied on district emission factors and expected operations from the subject emission units and/or included the analysis that was conducted in 1999 by a workgroup, including staff from the ARB, EPA Region 9 and CAPCOA, who developed a model list of insignificant activities. San Diego also removed language in the introduction to Appendix A to no longer allow insignificant activities to be exempt from the permit requirements of Regulation XIV.

Issue (6): San Diego was required to remove the reference to Rules 1410 (j) and (k) in Rule 1410(i).[1] This reference to minor and significant permit modifications in the provisions for administrative permit amendments could have be read to be inconsistent with the definition of ''significant permit modification'' (Rule 1401(c)(43)), which correctly defaulted unspecified changes to the significant permit modification process. In addition, EPA required the District to remove the word ''include'' from the phrase, ''These shall include the following'' in the administrative permit amendment section (Rule 1410(i)). See 40 CFR 70.7(d).

Rule Change: San Diego met this condition by revising Rule 1410 (i) to remove the reference to subsections (j) and (k) and to remove the phrase that included the word, ''include.''

Issue (7): The District must revise either the definition of ''federally mandated new source review'' or the definition of ''federally enforceable requirement'' to clearly include minor new source review as an applicable requirement under title V.

Rule Change: San Diego met this requirement by revising Rule 1401(c)(20) to now define Federally Mandated New Source Review (NSR) as ''* * * new source review that would be required by the approved State Implementation Plan (SIP).''

V. What Is Involved in This Proposed Action?

The EPA proposes full approval of the operating permits program submitted by San Diego County based on the revisions submitted on June 4, 2001 which satisfactorily address the program deficiencies identified in EPA's December 7,1995 Interim Approval Rulemaking. See 60 FR 62794. In addition, the District has revised and submitted as part of its revised program, changes to two forms:

- Form 1401–J1—Monitoring Report and Compliance Certification; and
- Form 1401–J2—Deviation Report.

EPA is not acting on these forms as part of this action because they were not required to revise these forms for full approval and the forms may not be consistent with the reporting requirements at 70.6(c)(5) [compliance certifications] and 70.6 (a)(3)(iii) [semi-annual monitoring reports and deviation reports].

Request for Public Comment

EPA requests comments on the program revisions discussed in this proposed action. Copies of the San Diego submittal and other supporting documentation used in developing the proposed full approval are contained in docket files maintained at the EPA Region 9 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary 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. EPA will consider any comments received in writing by November 19, 2001.

Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. 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). The rule merely proposes to approve 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 Clean Air Act. This proposed rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), because it is not a significantly 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

[1] A typographical error exists in our December 7, 1995 FR in which we referred to Rule 1410 as Rule 1401.

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.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program , to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply.

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.

Dated: October 11, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 01–26408 Filed 10–18–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA 050–OPP; FRL–7087–6]

Clean Air Act Full Approval of Operating Permit Program; San Joaquin Valley Unified Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to fully approve the operating permit program for the San Joaquin Valley Unified Air Pollution Control District (''San Joaquin'' or ''District''). The District's operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) 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 authorities' jurisdiction. EPA granted interim approval to the District's operating permit program on April 24, 1996. This action proposes approval of revisions to the District's permit program that were submitted to satisfy the conditions for full approval.

DATES: Comments on the program revisions discussed in this proposed action must be received in writing by November 19, 2001.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. You can inspect copies of the District's submittal, and other supporting documentation relevant to this action, during normal business hours at the EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105.

You may also see copies of the submitted Title V program at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814

The San Joaquin Valley Pollution Control District, 1990 E. Gettysburg Avenue, Fresno, CA 93726–0244

FOR FURTHER INFORMATION CONTACT: Ed Pike, EPA Region IX, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 744–1211 or pike.ed@epa.gov.

SUPPLEMENTARY INFORMATION: This section provides additional information on today's rulemaking:

What Is the Operating Permit Program?

The CAA Amendments of 1990 require all State and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include (but are not limited to) those that have the potential to emit: (1) 50 tons per year or more of volatile organic compounds or nitrogen oxides (NO_X) in a serious non-attainment; (2) 70 tons per year of particulate matter (PM_{10}) in a PM_{10} non-attainment area; (3) 10 tons per year of any single Hazardous Air Pollutant (as defined under section 112 of the CAA); or (4) 25 tons per year or more of a combination of Hazardous Air Pollutants (HAPs).

What Rules Were Submitted for Full Approval?

Where an operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the State or local permitting agency revising its program to correct the deficiencies. Because the San Joaquin operating permit program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to each program in a rulemaking published on April 24, 1996 [61 FR 18083]. The interim approval notice described the conditions that had to be met in order for the San Joaquin program to receive full approval.

In response, San Joaquin adopted revisions to three permitting regulations on June 21, 2001. The first is District Rule 2520, Federally Mandated Operating Permits, which is the District's part 70 permitting rule. The District also made revisions to the elements of District Rule 2201, New and Modified Source Review, that contain part 70 requirements allowing a source to obtain a modification under Rule 2201 that also satisfies part 70 requirements. District Rule 2020, Exemptions, was also revised. The California Air Resources Board, on behalf of the District submitted these revised regulations and other program revisions on July 3, 2001. This **Federal Register** notice describes the changes that have been made to the San Joaquin operating permit program since interim approval was granted and how the revised program meets the conditions for full approval.