

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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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.

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

objects to granting full approval to the Indiana title V program. The commenter states that public comments on deficiencies in the Indiana title V program remain unaddressed. In addition, he notes that changes to the Indiana program adopted since the November 14, 1995, interim approval also remain unaddressed. He believes that these issues result in a program that is insufficient and demonstrate that Indiana is "unwilling or unable to produce a minimally acceptable 40 CFR part 70 Operating Permits Program that meets the standard of full approval."

EPA is aware that issues other than those listed in the November 14, 1995, interim approval exist in the Indiana program and that the Indiana regulations have undergone changes since 1995 that have not been submitted to EPA for approval. EPA agrees that these issues must be addressed and that the state must submit all changes made since 1995 for EPA review and approval. For the reasons discussed below, however, we disagree that newly identified deficiencies prohibit us from granting Indiana full program approval at this time.

In 1990, Congress amended the Act, 42 U.S.C. 7401 to 7671q, by adding title V, 42 U.S.C. 7661 to 7661f, which requires certain air pollutant emitting facilities, including "major source[s]" and "affected source[s]," to obtain and comply with operating permits. See 42 U.S.C. 7661a(a). Title V is intended to be administered by local, state or interstate air pollution control agencies, through permitting programs that have been approved by EPA. See 42 U.S.C. 7661a(a). EPA is charged with overseeing the state's efforts to implement an approved program, including reviewing proposed permits and vetoing improper permits. See 42 U.S.C. 7661a(i) and 7661d(b). Accordingly, title V of the Act provides a framework for the development, submission and approval of state operating permit programs. Following the development and submission of a state program, the Act provides two different approval options that EPA may use in acting on state submittals. See 42 U.S.C. 7661a(d) and (g). Pursuant to section 502(d), EPA "may approve a program to the extent that the program meets the requirements of the Act * * * EPA may act on such program submittals by approving or disapproving, in whole or in part, the state program. An alternative option for acting on state programs is provided by the interim approval provision of section 502(g). This section states: "If a program * * * substantially meets the requirements of this title, but is not fully

approval, the Administrator may by rule grant the program interim approval." This provision provides EPA with the authority to act on state programs that substantially, but do not fully, meet the requirements of title V and part 70. Only those program submittals that meet the requirements of eleven key program areas are eligible to receive interim approval. See 40 CFR 70.4(d)(3)(i)-(xi). Finally, section 502(g) directs EPA to "specify the changes that must be made before the program can receive full approval." 42 U.S.C. 7661a(g); 40 CFR 70.4(e)(3). This explicit directive encompasses another, implicit one: Once a state corrects the specified deficiencies then it will be eligible for full program approval. EPA believes this is so even if deficiencies have been identified sometime after final interim approval, either because the deficiencies arose after EPA granted interim approval or, if the deficiencies existed at that time, EPA failed to identify them as such in proposing to grant interim approval.

Thus, an apparent tension exists between these two statutory provisions. Standing alone, section 502(d) appears to prevent EPA from granting a state operating permit program full approval until the state has corrected all deficiencies in its program no matter how insignificant, and without consideration as to when such deficiency was identified. Alternatively, section 502(g) appears to require that EPA grant a state program full approval if the state has corrected those issues that the EPA identified in the final interim approval. The central question, therefore, is whether Indiana by virtue of correcting the deficiencies identified in the final interim approval is eligible at this time for full approval, or whether Indiana must also correct any new or recently identified deficiencies as a prerequisite to receiving full program approval.

According to settled principles of statutory construction, statutory provisions should be interpreted so that they are consistent with one another. See *Citizens to Save Spencer County v. EPA*, 600 F.2d 844, 870 (D.C. Cir. 1979). Where an agency encounters inconsistent statutory provisions, it must give maximum possible effect to all of the provisions, while remaining within the bounds of its statutory authority. *Id.* at 870-71. Whenever possible, the agency's interpretation should not render any of the provisions null or void. *Id.* Courts have recognized that agencies are often delegated the responsibility to interpret ambiguous statutory terms in such a fashion. See *Chevron U.S.A., Inc. v. Natural*

Resources Defense Council, Inc., 467 U.S. 837, 845 (1984). Harmonious construction is not always possible, however, and furthermore should not be sought if it requires distorting the language in a fashion never imagined by Congress. *Citizens to Save Spencer County*, 600 F.2d at 870. Furthermore, as discussed more fully below, section 502 of the Act and 40 CFR 70.10 provide a mechanism for identifying problems in programs which states must correct to retain operating permit programs.

In this situation, in order to give effect to the principles embodied in title V that major stationary sources of air pollution must have an operating permit that conforms to certain statutory and regulatory requirements, and that state permitting authorities administer and enforce the operating permit programs, the appropriate and more cohesive reading of the statute recognizes EPA's authority to grant Indiana full approval in this situation while working simultaneously with the state, in EPA's oversight capacity, on any additional problems that were recently identified. To conclude otherwise would disrupt the current administration of the state program and cause further delay in Indiana's ability to issue operating permits to major stationary sources. A smooth transition from interim approval to full approval is in the best interest of the public and the regulated community and best reconciles the statutory directives of title V.

Furthermore, requiring the state to fix all of the deficiencies that have been identified in the past year to receive full approval runs counter to the established regulatory process, mentioned above, that is already in place to deal with newly identified program deficiencies. Section 502(i)(4) of the Act and 40 CFR 70.4(i) and 70.10 provide EPA with the authority to issue notices of deficiency ("NOD") whenever EPA makes a determination that a permitting authority is not adequately administering or enforcing a part 70 program, or that the state's permit program is inadequate in any other way. Consistent with these provisions, EPA will specify in a NOD a reasonable time frame for the permitting authority to correct the identified deficiency.

The Indiana title V interim approval expires on December 1, 2001. This deadline does not provide adequate time for the state to correct newly identified issues prior to the expiration of interim approval. Allowing the state's program to expire because of issues identified as recently as March 2001 will cause disruption and further delay in the issuance of permits to major stationary sources in Indiana. As

explained above, we do not believe that title V requires such a result. Rather, the appropriate mechanism for dealing with additional deficiencies that are identified sometime after a program received interim approval but prior to being granted full approval is the notice of program deficiency or administration deficiency as discussed herein. This process provides the state an adequate amount of time after such findings to implement any necessary changes without unduly disrupting the entire state operating permit program. As a result, addressing newly identified problems separately from the full approval process will not cause these issues to go unaddressed. To the contrary, EPA has notified Indiana that it must promptly correct the non-interim approval deficiencies within a specified time period or face sanctions and disapproval of its program. EPA identified non-interim approval deficiencies to Indiana in 2000. In response, Indiana began the process of revising its administrative code. Indiana worked with EPA throughout this rule adoption process to assure that all program deficiencies identified by EPA and by citizen groups are addressed by the revisions. Indiana's Air Pollution Control Board adopted the necessary title V rule revisions on October 3, 2001. These regulatory revisions still must undergo administrative review, and will not become effective until early 2002.

Because the regulatory revisions will not become effective by December 1, 2001, EPA will issue a NOD for these regulatory deficiencies in the Indiana program on that date. EPA recognizes that Indiana has almost completed the regulatory process to make the necessary revisions, and expects that the state will satisfy the conditions of the NOD by the end of February 2002. Furthermore, at the time that Indiana submits regulatory revisions to correct this NOD, the state must also submit for review and approval all changes that it has made to its title V program since we granted interim approval. Under that review, EPA will disapprove and issue NODs for any program revisions that are inconsistent with part 70.

What Is Involved in This Final Action?

The EPA is granting full approval of the operating permits program submitted by IDEM based on the interim approval corrections submitted on May 22, 1996. These revisions satisfactorily address the program deficiencies identified in EPA's November 14, 1995, interim approval rulemaking.

To date, no tribal government in Indiana has applied to EPA for approval to administer a title V program in Indian

country within the state. The EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may seek approval from EPA to implement a title V program on Indian reservations and in non-reservation areas over which the tribe has jurisdiction. The EPA's part 71 regulations govern the issuance of federal operating permits in Indian country. The 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. The 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.

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.

Two citizens groups commented on what they believe to be deficiencies with respect to the Indiana title V program. As stated in the **Federal Register** notice published on July 30, 2001 proposing to fully approve Indiana'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 Indiana's program and other programs that have obtained interim approval, and by April 1, 2002 to timely comments on fully approved programs. Consistent with these time frames, EPA also 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/ardcorre.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. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight. Furthermore, in the future, EPA may issue an additional NOD if EPA or a citizen identifies other deficiencies.

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 Indiana's Title V Program?

EPA's approval of Indiana'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 Indiana's prior program expires on December 1, 2001. In the absence of this full approval of Indiana's amended program taking effect on November 30, the federal program under 40 CFR part 71 would automatically take effect in Indiana 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 Indiana 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 IDEM has been administering the title V permit program for 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.

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 adding paragraph (b) to the entry for Indiana to read as follows:

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

* * * * *

Indiana

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(b) The Indiana Department of Environmental Management: Program revisions submitted on May 22, 1996; submittal adequately addressed the conditions of the interim approval which expires on December 1, 2001. Indiana is hereby granted final full approval effective November 30, 2001.

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[FR Doc. 01-29962 Filed 12-3-01; 8:45 am]

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