

(d) and (e) of the Commission's regulations pertaining to codes of conduct with respect to certain sales of natural gas and does not include new information requirements under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## V. Environmental Statement

50. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>77</sup> The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.<sup>78</sup> Thus, we affirm the finding we made in the NOPR that this Final Rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration would be necessary.

## VI. Document Availability

51. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

52. From the Commission's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available on eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

53. User assistance is available for eLibrary and the Commission's website during normal business hours. For assistance, please contact Online Support at 1-866-208-3676 (toll free) or 202-502-6652 (e-mail at [FERCOnlineSupport@FERC.gov](mailto:FERCOnlineSupport@FERC.gov)), or the Public Reference Room at 202-502-8371, TTY 202-502-8659 (e-mail at [public.reference.room@ferc.gov](mailto:public.reference.room@ferc.gov)).

<sup>77</sup> *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (1987), FERC Stats. & Regs. ¶ 30,783 (1987).

<sup>78</sup> 18 CFR 380.4(a)(2)(ii) (2005).

## VII. Effective Date and Congressional Notification

54. This final rule will take effect on March 29, 2006. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>79</sup> The Commission will submit the Final Rule to both houses of Congress and the Government Accountability Office.<sup>80</sup>

### List of Subjects in 18 CFR Part 284

Natural Gas, Pipelines, Investigations, Penalties.

By the Commission.

Magalie R. Salas,  
Secretary.

■ In consideration of the foregoing, the Commission amends part 284, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

### PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 1. The authority citation for part 284 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

#### § 284.288 [Amended]

■ 2. In § 284.288, paragraphs (a), (d), and (e) are removed, and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively.

#### § 284.403 [Amended]

■ 3. In § 284.403, paragraphs (a), (d), and (e) are removed, and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively.

**Note:** The following appendix will not appear in the Code of Federal Regulations.

### Appendix—List of Parties Filing Comments and Reply Comments and Acronyms

American Gas Association (AGA)  
American Public Gas Association (APGA)  
California Public Utilities Commission (CPUC) \*\*  
Cinergy Services, Inc. and Cinergy Marketing & Trading, LP (Cinergy)  
Constellation Energy Group Inc., et al. (Indicated Market Participants)  
Interstate Natural Gas Association of America (INGAA)

<sup>79</sup> 5 U.S.C. 804(2) (2000).

<sup>80</sup> 5 U.S.C. 801(a)(1)(A) (2000).

Missouri Public Service Commission (MoPSC)\*

National Association of State Utility Consumer Advocates (NASUCA)

Natural Gas Supply Association (NGSA)

New Jersey Board of Public Utilities (NJBPUC)

New York State Public Service Commission (NYPSC)

\*Entities filing late comments.

\*\*Entities filing reply comments in addition to initial comments.

[FR Doc. 06–1718 Filed 2–24–06; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 69

[EPA–R09–OAR–2005–0506; FRL–8030–3]

### State Implementation Plan Revision and Alternate Permit Program; Territory of Guam

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is taking direct final action to grant full approval for the Guam operating permit program and an associated State Implementation Plan (SIP) revision submitted by the Territory of Guam (Guam). These submittals correct deficiencies identified in EPA's direct final interim approval rulemaking of January 9, 2003 (68 FR 1162). Final approval of Guam's alternate permit program and associated SIP revision will allow sources to be permitted under an approved alternate permit program. This alternate program fulfills all of the requirements that Guam adopt and submit an alternate local permitting program as part of a conditional exemption under section 325 of the Clean Air Act (Act) from Title V of the Act.

**DATES:** This rule is effective on April 28, 2006 without further notice, unless EPA receives adverse comments by March 29, 2006. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR–2005–0506, by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions.

2. Agency Web site: <http://docket.epa.gov/rmepub/>. EPA prefers receiving comments through this electronic public docket and comment

system. Follow the on-line instructions to submit comments.

3. E-mail: [pike.ed@epa.gov](mailto:pike.ed@epa.gov).

4. Mail or deliver: Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

**Instructions:** All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal or e-mail. The agency Web site and eRulemaking portal are "anonymous access" systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

**Docket:** The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Ben Machol, EPA Region IX, at (415) 972-3770, ([Machol.Ben@epa.gov](mailto:Machol.Ben@epa.gov)), Pacific Islands Office, or Ed Pike, at (415) 972-3970, ([Pike.Ed@epa.gov](mailto:Pike.Ed@epa.gov)) Permits Office, Air Division, at the EPA-Region IX address listed above.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

##### **II. Final Action and Implications**

###### **A. Effect of Final Approval of Guam's Alternate Permit Program**

###### **B. How Guam's Alternate Permitting Program Meets the Requirements for Full Approval**

##### **III. Administrative Requirements**

#### **I. Background**

Section 325(a) of the Act authorizes the Administrator of EPA, upon petition by the Governor, to exempt any person

or source or class of persons in Guam, from any requirement of the Act except for requirements of section 110 and part D of subchapter I of the Act (where necessary to attain and maintain the National Ambient Air Quality Standards), and section 112. An exemption may be granted if the Administrator finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant.

The Governor of Guam previously submitted a petition pursuant to section 325(a) of the Act for an exemption from Title V of the Act. Title V requires states, including Guam, to adopt and submit to EPA a Title V operating permit program for major sources and certain other stationary sources. If any state does not adopt an operating permit program, Title V requires EPA to apply certain sanctions within that area and to promulgate, administer, and enforce a Federal operating permit program for such area. Title V requires that sources located in states that do not adopt a Title V permitting program obtain a Federal operating permit from the EPA. Guam requested an exemption from the Title V program, but committed to achieving key goals of Title V by developing an alternate operating permit program.

On November 13, 1996, EPA issued a direct final rule (61 FR 58289), codified at 40 CFR 69.13 (the conditional exemption) that granted the government of Guam an exemption from the requirement to adopt a Title V program on the condition that Guam adopt and implement a local alternate operating permit program. EPA also granted owners or operators of certain sources on Guam a conditional exemption from the requirement to apply for a Federal Title V operating permit under part 71. That rulemaking does not waive or exempt the government of Guam, or owners or operators of sources located in Guam, from complying with all other applicable Clean Air Act provisions.

On January 13, 1999, Guam submitted an alternate permit program, consisting of Guam's Air Pollution Control Standards and Regulations (Guam's Regulations), along with supporting documents and authorizing legislation. EPA granted interim approval to that program on January 9, 2003 and listed necessary corrections to qualify for full approval. Guam submitted program corrections on June 30, 2005 that EPA believes meet the requirements for full approval, as explained below in section II.B.

#### **II. Final Action and Implications**

##### **A. Effect of Final Approval of Guam's Alternate Permit Program**

EPA is granting full approval of the alternate permit program submitted by Guam. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to grant full approval to Guam's part 69 alternate permitting program if adverse comments are filed. This rule will be effective on April 28, 2006 without further notice unless we receive adverse comment by March 29, 2006. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action and any parties interested in commenting must do so at this time. This includes any comments regarding additional changes (see the Guam EPA Technical Support Document) that are not related to the requirements for full approval. The effect of this full approval is to provide Guam with approval to issue operating permits to all sources subject to their approved permit program, based on our determination that Guam has met the part 69 requirements for submitting an approvable part 69 alternate permitting program.

EPA is also now removing 40 CFR 69.13(f)(2) for several reasons. EPA's 2003 interim approval established a deadline of October 9, 2004 in § 69.13(f)(2) to submit a fully approvable program. While Guam did not submit a fully approvable program by that date, Guam has now met the substantive operating permit program requirements of part 69. In addition, Guam has implemented the program by processing permit applications and drafting operating permits. Thus, it would be administratively burdensome and duplicative to implement a Federal permitting program now that the alternative permitting program has met the substantive requirements of the part 69 conditional waiver. In addition, EPA has not yet begun the process of drafting Federal operating permits on Guam. Because Guam EPA expects to issue operating permits soon, it would be counterproductive to delay the air quality benefits of permitting sources on Guam by implementing a Federal part

71 permitting program at this time. We will instead remove § 69.13(f)(2) to allow Guam to finalize the part 69 permits that it has drafted. This action fully approving Guam's alternative operating permit program does not change any of the other conditions in 40 CFR 69.13.

EPA is granting full approval only to those portions of Guam's Regulations that are necessary to implement Guam's alternate permit program, as required by the part 69 conditional exemption as part of the exemptions from the Title V program. This approval does not constitute approval under any other provisions of the Act. Except as provided herein, all other terms and conditions of the conditional exemption continue unchanged. The scope of the exemptions set forth in the conditional exemption continues unchanged. EPA continues to reserve its authority to revoke or modify the exemptions in whole or in part.

#### *B. How Guam's Revisions To Alternate Permitting Program Meet the Requirements for Full Approval*

##### **1. State Implementation Plan Revision Provides Program Enforceability**

40 CFR 69.13(c) states that Guam shall submit a revision to its SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by Guam pursuant to the exemption authorized in 40 CFR 69.13. 40 CFR 69.13(f)(3) states that Guam must adopt this revision through the appropriate procedures, which we believe is inherently also required by 40 CFR 69.13(c). Guam has adopted this requirement in section 1104.26 of their Guam Air Pollution Control Standards and Regulations and submitted evidence of procedurally correct adoption. EPA is approving this section into the SIP through this rulemaking (Please note that Guam has only requested SIP approval of section 1104.26, and has not requested SIP-approval of other rules, as part of this action).

##### **2. Guam Has Clarified EPA's Permit Reopening Authority**

EPA believes that the rule revisions address EPA's permit reopening authority. The rule states that Guam EPA will address EPA reopening determinations within 180 days, and that if issues are not resolved within 180 days, then USEPA shall issue the permit under part 71. This is consistent with the requirements for full approval of the Guam program.

##### **3. Guam Has Authority for Injunctive Relief**

40 CFR 69.13(b)(6) requires that the alternate operating permit program provide Guam EPA with the authority to enjoin activities that are in violation of the permit, the program, or the Act without first revoking a permit. Guam has revised section 1104.25 of the permitting program to reference section 49115 of chapter 49, part 2, division 2, part 1 of title 10 of the Guam Code Annotated, which provide Guam EPA with the proper authority.

##### **4. Guam Has Clarified the Scope of Program Submittal**

Guam EPA has clarified in the program submittal letter dated June 30, 2005, that the program includes the following sections of the Guam Air Pollution Control Standards and Regulations in addition to the other relevant sections of these regulations:

Section 1102.3	Certification
Section 1102.7	Public Access to Information
Section 1102.9	Prompt Reporting of Deviations
Section 1106	Standards of Performance for Air Pollution Emission Sources

##### **5. Guam Has Clarified Program Definitions and Section 1104.2(b)**

Guam has adopted verbatim the language changes 1 through 4 and 6 required by EPA (see Section 5 of the "Conditions for Full Approval" September 24, 2002 Technical Support Document). The September 2004 Technical Support Document for Revisions to the Guam Air Pollution Control Standards and Regulations explains that these changes were adopted.

Guam has made additional changes in response to clarifications that we requested regarding insignificant activities. Guam has clarified that only specific activities, rather than "sources," can qualify for treatment as insignificant. EPA believes that the rules now adequately explain that the basis for determining what is "insignificant" will be determined activity-by-activity. Section 1104.6(e) has been re-titled to "Insignificant Activities at a federal oversight source" because it explains how insignificant activities will be addressed in permit applications, and references to minor sources were removed.

### **III. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action 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 rule 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 any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This 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), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission

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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. 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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 2006. 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)).

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

##### 40 CFR Part 69

Environmental protection, Air pollution control, Guam.

Dated: January 20, 2006.

**Laura Yoshii,**

*Regional Administrator, Region 9.*

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

##### Subpart AAA—Guam

■ 2. In § 52.2670, the table in paragraph (c) is amended by adding an entry for Section 1104.26 under “Chapter 03.10, 3.11 and 03.13” to read as follows:

##### § 52.2670 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

#### EPA APPROVED TERRITORY OF GUAM REGULATIONS

State citation	Title/subject	Effective date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	* * *
Section 1104.26 .....	Permit Compliance .....	06/03/05 ....	02/27/06 .....	[Insert page number where document begins].
* * *	* * *	* * *	* * *	* * *

■ Part 69, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 69—[AMENDED]

■ 1. The authority citation for part 69 continues to read as follows:

**Authority:** 42 U.S.C. 7545(c), (g) and (i), and 7625–1.

##### Subpart A—Guam

■ 2. Subpart A is amended by revising § 69.13(f) to read as follows:

##### § 69.13 Title V conditional exemption.

\* \* \* \* \*

(f) Final approval of alternate permit program.

(1) The following sections of Guam's Air Pollution Control Standards and Regulations are granted final approval as Guam's alternate permit program:

- 1101.1(a) Administrator
- 1101.1(d) Air pollutant
- 1101.1(e) Air pollution

- 1101.1(i) Air pollution emission source
- 1101.1(r) CFR
- 1101.1(s) Clean Air Act
- 1101.1(t) Commenced
- 1101.1(v) Compliance Plan
- 1101.1(aa) Emission
- 1101.1(cc) Emissions unit
- 1101.1(ii) Fugitive Emissions
- 1101.1(jj) GEPA
- 1101.1(kk) Hazardous air pollutant
- 1101.1(xx) Owner or operator
- 1101.1(zz) Permit
- 1101.1(bbb) Person
- 1101.1(eee) Potential to emit
- 1101.1(iii) Regulated air pollutant
- 1101.1(jjj) Responsible official
- 1101.1(ooo) Source
- 1101.1(uuu) USEPA
- 1101.1(vvv) USEPA Administrator
- 1102.3 Certification
- 1102.7 Public Access to Information
- 1102.9 Prompt Reporting of Deviations
- 1104.1 Definitions
- (a) Administrative Permit Amendment
- (b) AP-42

- (c) Applicable requirement
- (d) Federal oversight source
- (e) Insignificant source
- (f) Insignificant sources—Type I
- (g) Insignificant sources—Type II
- (h) Major source
- (i) Minor source
- (j) Modification
- (k) Pollution prevention
- (l) Significant modification
- (m) Transition period
- 1104.2 Applicability
- 1104.3 General conditions for considering applications
- 1104.4 Holding and transfer of permit
- 1104.5(a) Cancellation of Air Pollution Control Permit
- 1104.6 Air Pollution Control Permit Application
- 1104.7 Duty to Supplement or Correct Permit Applications
- 1104.8 Compliance Plan
- 1104.9 Compliance Certification of Air Pollution Emission Sources
- 1104.10 Transition Period and Deadlines to Submit First Applications
- 1104.11 Permit Term

1104.12 Permit Content  
 1104.13 Inspections  
 1104.14 Federally-Enforceable  
 Permit Terms and Conditions  
 1104.15 Transmission of  
 Information to USEPA  
 1104.16 USEPA Oversight  
 1104.17 Emergency Provision  
 1104.18 Permit Termination,  
 Suspension, Reopening, and  
 Amendment  
 1104.19 Public Participation  
 1104.20 Administrative Permit  
 Amendment  
 1104.21 General Fee Provisions  
 1104.22 Air Pollution Control  
 Special Fund  
 1104.23 Application Fees for Air  
 Pollution Emission Sources  
 1104.24 Annual Fees for Air  
 Pollution Emission Sources  
 1104.25 Penalties and Remedies  
 1106 Standards of Performance for  
 Air Pollution Emission Sources

(2) SIP Revision. Guam shall adopt, pursuant to required procedures, and submit to EPA a revision to Guam's SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by Guam pursuant the exemption authorized in this § 69.13.

[FR Doc. 06-1740 Filed 2-24-06; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

[WI-118-2; FRL-8037-5]

#### Notice of Resolution of Notice of Deficiency for Clean Air Act Operating Permit Program; Wisconsin

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

**ACTION:** Notice of resolution.

**SUMMARY:** EPA issued a notice of deficiency (NOD) on March 4, 2004 (69 FR 10167), in which EPA identified problems with Wisconsin's Clean Air Act (Act) title V operating permit program and a timeframe for the State to correct these deficiencies. The Wisconsin Department of Natural Resources (WDNR) submitted corrections to its permit program on August 18, 2005, and revisions to a related rule on December 8, 2005. This document announces that based on information provided by the WDNR, EPA concludes that the State of Wisconsin has resolved all of the issues identified in the March 4, 2004, NOD.

As a result, EPA will not impose sanctions set forth under the mandatory sanctions provisions of the Act. In addition, EPA will not promulgate, administer, and enforce a whole or partial operating permit program pursuant to the title V regulations of the Act within 2 years after the date of the finding of deficiency.

**DATES:** Effective February 16, 2006.

Because this notice of resolution is an adjudication and not a final rule, the Administrative Procedure Act's 30 day deferral of the effective date of a rule does not apply.

**ADDRESSES:** The documents relevant to the above action are available for public inspection during normal business hours at the following address: Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Susan Siepkowski, Environmental Engineer, at (312) 353-2654 before visiting the Region 5 office.

#### FOR FURTHER INFORMATION CONTACT:

Susan Siepkowski, Environmental Engineer, Air Permit Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-2654, [siepkowski.susan@epa.gov](mailto:siepkowski.susan@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Is the Background Information for This Action?
- II. What Did Wisconsin Submit and What Did EPA Determine Regarding Each Deficiency?
  - A. Demonstration of Sufficient Fees to Cover Program Costs
  - B. Demonstration of Title V Fees Being Used Solely for the Title V Program
  - C. Issuance of Title V Permits
  - D. Program Implementation Issues
- III. What Action Is EPA Taking and What Does This Mean?

#### I. What Is the Background Information for This Action?

On March 4, 2004, EPA published a NOD for the title V Operating Permit Program in Wisconsin. (69 FR 10167). The NOD was based upon EPA's findings that the State's title V program did not comply with the requirements of the Act or with the implementing regulations at 40 CFR part 70 in the following four respects: (1) Wisconsin had failed to demonstrate that its title V program required owners or operators of

part 70 sources to pay fees sufficient to cover the costs of the State's title V program in contravention of the requirements of 40 CFR part 70 and the Act; (2) Wisconsin was not adequately ensuring that its title V program funds were used solely for title V permit program costs and, thus, was not conducting its title V program in accordance with the requirements of 40 CFR 70.9 and the Act; (3) Wisconsin had not issued initial title V permits to all of its part 70 sources within the time allowed by the Act and 40 CFR 70.4; and (4) Wisconsin had other deficiencies with the implementation of its permit program.

Wisconsin was required to address these deficiencies within 18 months of the date of the issuance of the March 4, 2004 NOD, or the state would be subject to the sanctions under 40 CFR 70.10(b)(3) and section 179(b) of the Act. In addition, 40 CFR 70.10(b)(4) provides that, if the state has not corrected the deficiency within 18 months of the date of the finding of deficiency, EPA will promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

#### II. What Did Wisconsin Submit and What Did EPA Determine Regarding Each Deficiency?

On August 18, 2005, WDNR submitted to EPA the "Wisconsin DNR Response to USEPA Notice of Deficiency Related to the 'Title V Program' dated March 4, 2004" (NOD Response). The NOD Response is available to view in the docket, Docket ID No. WI-118-2. In the NOD Response, and its accompanying attachments, WDNR explained and documented how each of the deficiencies identified in the NOD had been, or were being, addressed. The NOD Response contains documented internal operational changes within WDNR, a copy of the fee structure included in Wisconsin's 2005-07 biennial budget bill enacted into law as 2005 Wisconsin Act 25 (published July 26, 2005), and numerous attachments describing WDNR's permit program, program costs, fee structure, and workload. Additionally, on December 8, 2005, WDNR submitted to EPA for approval, a SIP revision related to one of the deficiencies, "Request to the USEPA to Revise Wisconsin's SIP Pertaining to the Permanency of Construction Permit Conditions" (Permanency Revision).

Based on the information in WDNR's NOD Response, and the Permanency Revision to Wisconsin's SIP, EPA has determined that Wisconsin has demonstrated that it has resolved each