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ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 70

[MS01; FRL-5082-8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: The EPA proposes to grant full approval to the Operating Permits Program submitted by the State of Mississippi for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by November 2, 1994.

ADDRESSES: Written comments should be addressed to Carla Pierce at the Region IV address.

Copies of the State's submittal and other supporting information used in developing the proposed full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, GA 30365. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Carla E. Pierce, Regional Program Manager, Air Programs Branch, Air Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365, telephone (404) 347-2864.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act Amendments of 1990, (Clean Air Act ('`Act'') sections 501-507), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to EPA, programs for issuing

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

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

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

Pursuant to section 502(d) of the Clean Air Act as amended (1990 Amendments), the Governor of each State must develop and submit to the Administrator an operating permits program under State or local law or under an interstate compact meeting the requirements of title V of the Act. The Mississippi Department of Environmental Quality (MDEQ) requested, under the signature of Governor Kirk Fordice, approval of its operating permits program with full authority to administer the program in all areas of the State of Mississippi, with the exceptions of the Indian reservations and tribal lands.

In the MDEQ operating permits program submittal, Mississippi does not assert jurisdiction over Indian lands or reservations for purposes of 40 CFR part 70 and title V. EPA will, at a future date, conduct a Federal title V operating permits program governing title V sources of air emissions on Indian lands and reservations in Mississippi.

The Mississippi submittal, provided as Section I-'Program Description and Implementation Summary,' addresses 40 CFR 70.4(b)(1) by describing how the MDEQ intends to carry out its responsibilities under the part 70 regulations. The program description has been deemed to be sufficient for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the Attorney General (or the attorney for the State air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of a title V operating permits program. The State of Mississippi submitted an Attorney General's Opinion and a Supplemental Attorney General's Opinion demonstrating adequate legal authority as required by Federal law and regulation.

Section 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit application forms, permit forms and relevant guidance to assist in the State's implementation of its permit program. Appendix 10 of the MDEQ submittal includes the permit application form, and it has been determined that the application form meets the requirements of 40 CFR 70.5(c).

EPA intends to develop an Implementation Agreement with Mississippi, although this proposed action does not depend on the Implementation Agreement.

2. Regulations and Program Implementation

The State of Mississippi has submitted Regulations APC-S-6, ``Mississippi Air Emissions Operating Permit Regulations for the purposes of title V of the Federal Clean Air Act,`` for implementing the State part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption was included in Appendices 7 and 12 of the submittal. Copies of all applicable State statutes and regulations which authorize the part 70 program, including those governing State administrative procedures, were submitted with the State's program.

The Mississippi operating permits regulations followed part 70 very closely. The following requirements, set out in EPA's part 70 operating permits program review, are addressed in Section II of the State's submittal: (A) Applicability requirements, (40 CFR 70.3(a)): APC-S-6, Section I.B; (B) Permit applications, (40 CFR 70.5): APC-S-6, Section II; (C) Provisions for permit content, (40 CFR 70.6): standard permit requirements: APC-S-6, Section III.A.1; permit duration: APC-S-6, Section III.A.2; monitoring and related record keeping and reporting requirements: APC-S-6, Section III.A.3; compliance requirements: APC-S-6, Sections III.B and III.C; (D) Operational flexibility provisions, (40 CFR 70.4(b)(12)): APC-S-6, Section IV.F; (E) Provisions for permit issuance, renewals, reopenings and revisions, including public participation (40 CFR 70.7): APC-S-6, Section IV; and (F) Permit review by EPA and affected States (40 CFR 70.6): APC-S-6, Section V. Mississippi Code Annotated (MSCA) sections 49-17-36 and 49-17-43, satisfy the requirements of 40 CFR 70.11, for enforcement authority.

The MDEQ has included criteria to determine insignificant activities and emissions levels in APC-S-6, Section VII. Section VII.A includes activities/emissions sources which are not required to be included in the permit application. Section VII.B includes activities/emissions sources that must be listed in the permit application, but their emissions do not have to be quantified. Notwithstanding Sections VII.A and B, applicants are required to include all emission sources and quantify emissions if needed to determine major source compliance with an applicable requirement, or to collect any permit fee. Applicants shall also include all emission sources with a potential to emit greater than 1 pound per hour of any regulated air pollutant that is not a hazardous air pollutant, or greater than 0.1 pound per hour of any hazardous air pollutant.

Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given that this is a distinct reporting obligation under 40 CFR 70.6(a)(3)(iii)(A). Where ``prompt`` is defined in the individual permit but not in the program regulations, EPA may veto permits that do not require sufficiently prompt reporting of deviations. The State of Mississippi has not defined prompt in its program regulations with respect to reporting of deviations. The MDEQ,

however, has committed to define ``prompt'' as discussed above in each individual permit.

The State statute (MSCA 49-2-9) contains a provision that allows the State to adopt, modify, repeal, and promulgate, after due notice and hearing, and where not otherwise prohibited by Federal or State law, to make exceptions to and grant exceptions and variances from, and to enforce rules and regulations implementing or effectuating the powers and duties of the Mississippi Commission on Environmental Quality under any and all statutes within the Commission's jurisdiction, and as the Commission may deem necessary to prevent, control and abate existing or potential pollution. Regulation APC-S-6, Section I.B.8 prohibits exceptions or variances to be granted from any of the regulations regarding title V permits. The program submittal is approvable based on these limitations placed on the state's variance provision.

The complete MDEQ program submittal and the Technical Support Document are available for review for more detailed information.

3. Permit Fee Demonstration

MSCA sections 49-17-14 and 49-17-30 require the establishment of a permit fee sufficient to cover the reasonable direct and indirect costs of the title V operating permit program. The fee amount is set annually by order of the Mississippi Commission on Environmental Quality and is based on either actual or allowable emissions at the request of the source. Under State law, the minimum annual fee assessment is set at \$250 and the maximum annual fee assessment is set at \$250,000.

The MDEQ has elected to assess a title V operating permit fee below the Federal presumptive minimum permit fee. Mississippi's fee amount was determined through a detailed fee demonstration study that was conducted by the John C. Stennis Institute of Government at Mississippi State University. The basis of the fee demonstration was a comprehensive workload analysis for the title V program.

Based on the results of the fee demonstration study, the Mississippi Commission on Environmental Quality issued an Order setting the title V fee at \$23.39 per ton of regulated air pollutants for the first year of the title V program. The fee may be adjusted annually by Order of the Commission to account for inflation factors or changing program costs. EPA has determined that Mississippi's fee demonstration is adequate and meets the requirements of 40 CFR 70.9.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation. Mississippi has demonstrated in its title V program submittal broad legal authority to incorporate into permits and enforce all applicable requirements. Additionally, the State has adopted APC-S-1, Section 8, ``Provisions for Hazardous Air Pollutants,'' which provides adequate legal authority to implement and enforce applicable section 112 rules, emission standards, and requirements. Mississippi has further supplemented its broad legal authority with a commitment to ``take action, following promulgation by EPA of regulations implementing section 112 of title III of the Federal Clean Air Act, and to submit, for EPA approval, MDEQ regulations implementing these provisions.'' EPA has determined that this commitment, in conjunction with Mississippi's broad statutory and regulatory authority, adequately assures compliance with all section 112 requirements. EPA regards this commitment as an acknowledgement by Mississippi of its obligation to obtain further regulatory authority as needed to issue permits that assure compliance with section 112 applicable requirements. This commitment does not substitute for compliance with part 70 requirements that must be met at

the time of program approval.

EPA is interpreting the above legal authority and commitment to mean that Mississippi is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this proposed full approval and the April 13, 1993 guidance memorandum entitled ``Title V Program Approval Criteria for Section 112 Activities,' ' signed by John Seitz.

b. Implementation of 112(g) Upon Program Approval. As a condition of approval of the part 70 program, Mississippi is required to implement section 112(g) of the Act from the effective date of the part 70 program. Imposition of case-by-case determinations of MACT or offsets under section 112(g) will require the use of a mechanism for establishing federally enforceable restrictions on a source-specific basis. EPA is proposing to approve Mississippi's preconstruction permitting program found in APC-S-2 under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. EPA believes this approval is necessary so that Mississippi has a mechanism in place to establish federally enforceable restrictions for section 112(g) purposes from the date of part 70 approval. Section 112(1) provides the authority for approval for the use of State air programs to implement 112(g), and title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g), and does not confer or imply approval for purposes of any other provision under the Act. If Mississippi does not wish to implement section 112(g) through its preconstruction permit program and can demonstrate that an alternative means of implementing section 112(g) exists, EPA may, in the final action approving Mississippi's part 70 program, approve the alternative instead.

This approval only extends until such time as the State is able to adopt regulations consistent with any regulations promulgated by EPA to implement section 112(g). Accordingly, EPA is proposing to limit the duration of this approval to a reasonable time following promulgation of section 112(g) regulations so that Mississippi, acting expeditiously, will be able to adopt regulations consistent with the section 112(g) regulations. EPA is proposing here to limit the duration of this approval to 18 months following promulgation by EPA of section 112(g) regulations.

c. Program for Delegation of Section 112 Standards as Promulgated. Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(1)(5) requirements for approval of a program for delegation of section 112 General Provisions Subpart A and standards as promulgated by EPA as they apply to part 70 sources. Section 112(1)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(1)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated, and to delegate existing standards under 40 CFR parts 61 and 63 for part 70 sources.<SUP>1 Mississippi has informed EPA that it intends to accept delegation of section 112 standards through adoption by reference. This program applies to both existing and future standards.

\1\The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ``major'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

Additionally, Mississippi has requested delegation of current and future section 112 standards under section 112(1)(5) and 40 CFR 63.91 for sources not subject to part 70 requirements. The State has demonstrated that it has broad legal authority which covers all section 112 sources. MSCA sections 49-2-9 and 49-17-29(a), and APC-S-1 section 8, give the State the authority to implement each applicable section 112 rule, emission standard, or requirement for sources not subject to part 70 requirements. Mississippi has demonstrated that it will expeditiously implement section 112 requirements for these sources pursuant to a schedule after EPA promulgation, and that it has sufficient enforcement authority to adequately enforce section 112 requirements. The State has also demonstrated that it has adequate resources to implement current section 112 standards. With respect to future section 112 requirements, Mississippi has committed to provide EPA with future demonstrations of resource adequacy as necessary when new requirements are promulgated and the resource burdens associated with those requirements become known. Therefore, for sources not subject to part 70 requirements, EPA is proposing to grant approval under section 112(1)(5) and 40 CFR 63.91 of the State's program for receiving delegation of future section 112 standards that are unchanged from Federal standards as promulgated, and to delegate existing standards under 40 CFR parts 61 and 63 for non-part 70 sources.

d. Commitment to implement Title IV of the Act. The MDEQ has committed to ``take action, following promulgation by EPA of regulations implementing sections 407 and 410 of the Act, or revising either part 72 or the regulations implementing sections 407 or 410, to either incorporate such new revised provisions by reference or submit, for EPA approval, MDEQ regulations implementing these provisions.'' The MDEQ committed to adopt and submit to EPA the above referenced regulations no later than January 1, 1995.

B. Proposed Actions

1. Full Approval of the Program

EPA proposes to fully approve the operating permits program submitted to EPA from the State of Mississippi on November 15, 1993. As a condition of full approval, Mississippi has issued a commitment to EPA which confirms that the State's interpretation of a ``title I modification'' is consistent with EPA's current interpretation of that term. In addition, the State's regulatory definition is on its face consistent with EPA's interpretation. See APC-S-6, Section I.A.31. EPA believes the better interpretation of the phrase ``modifications under any provision of title I of the Act'' in 40 CFR 70.7(e)(2)(i)(A)(5) to

mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include State preconstruction review programs approved into the State Implementation Plan (SIP) under section 110(a)(2)(C) and regulations addressing source changes that trigger National Emission Standards for Hazardous Air Pollutants (NESHAPs) established pursuant to section 112 prior to the 1990 amendments. EPA is soliciting comment in the current proposal to revise part 70 on the proper definition of "title I modification." Unless Mississippi changes its own interpretation from that indicated in its commitment, the program will be fully approvable under either option discussed in that proposal. See 56 FR 44460, 44515 (August 29, 1994). EPA has determined that the program is otherwise adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70.

2. Program for Straight Delegation of Section 112 Standards

As discussed above in section II.A.4.c, EPA is proposing to grant approval under section 112(1)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations applies to all section 112 sources. Additionally, EPA is proposing to delegate existing standards under 40 CFR parts 61 and 63 for all section 112 sources.

III. Administrative Requirements

A. Request for Public Comments

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

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

(2) To serve as the record in case of judicial review. EPA will consider any comments received by November 2, 1994.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from executive order 12866 review.

C. Regulatory Flexibility Act

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

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure,
Air pollution control, Intergovernmental relations, Operating permits,
Reporting and recordkeeping requirements.

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

Dated: September 21, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

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