

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-7115-3]

Notice of Deficiency for Clean Air Act Operating Permit Program in Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to its authority at 40 CFR 70.10, EPA is publishing this Notice of Deficiency (NOD) for the State of Michigan's Clean Air Act title V operating permit program. The NOD is based upon EPA's finding that the state's requirements for administrative permit amendments do not comply with the requirements of 40 Code of Federal Regulations (CFR) part 70 and the Act. Publication of this document is a prerequisite for withdrawal of the state's title V program approval, but EPA is not withdrawing this program through this action.

EFFECTIVE DATE: November 30, 2001. Because this NOD 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.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano, EPA Region 5 (AR-18J), 77 W. Jackson Boulevard, Chicago, Illinois 60604, (312) 886-2703, valenziano.beth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

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). Sierra Club and the New York Public Interest Research Group challenged the action. In settling the litigation, EPA agreed to publish a document in the **Federal Register**, so that the public would have the opportunity to identify and bring to EPA's attention alleged deficiencies in title V programs. The EPA published that document on December 11, 2000. 65 FR 77376.

As stated in the **Federal Register** document, EPA agreed to respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA agreed to respond by April 1, 2002 to timely comments on fully approved programs. The EPA is publishing a NOD if the Agency determines that a deficiency exists, and is notifying the commenter in writing to explain the reasons for not making a finding of deficiency on other issues. The EPA received two timely comment letters

pertaining to the Michigan title V program. In reviewing the commenters' concerns, EPA agrees that one commenter has identified a deficiency in Michigan's title V operating permit program relating to the state's administrative permit amendment regulations. The EPA is addressing that deficiency in this document. In addition, the commenters raised other issues that EPA has determined are not deficiencies. The EPA is responding to the commenters in writing, explaining the basis for EPA's decision.

Under EPA's permitting regulations, citizens may, at any time petition EPA regarding alleged deficiencies in state title V operating permit programs. In addition, EPA may on its own identify deficiencies. If, in the future, EPA agrees with a new citizen petition or otherwise identifies deficiencies, EPA may issue a new NOD.

II. Description of Action

The EPA is publishing this NOD to notify the state of Michigan and the public that EPA has found a deficiency in the Michigan title V operating permit program. This document is being published to satisfy 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a state's title V permitting program no longer complies with the requirements of 40 CFR part 70 and the Clean Air Act (Act). The deficiency being noticed today relates to Michigan's regulatory authority to grant a permit shield from enforcement for certain administrative amendments.

The EPA's regulations at 40 CFR 70.7(d)(4) do not allow a state operating permit program to grant a permit shield for the following administrative permit amendments specified in 40 CFR 70.7(d)(1)(i)-(iv): a change that corrects typographical errors; a change in the name, address or phone number of the responsible official or other contact person; a change that provides for more frequent monitoring and reporting; and a change in the ownership or operational control of a source where no other changes to the permit are necessary. However, Michigan's rules allow a permit shield for such amendments. Specifically, Michigan Rule (R) 336.1216(1)(b)(iii) provides that the permit shield as described in 40 CFR 70.6(f) and R 336.1213(6) applies to administrative amendments made pursuant to R 336.1216(a)(i) through (iv) once the changes have been approved by the Michigan Department of Environmental Quality (MDEQ). R 336.1216(a)(i) through (iv) allows administrative amendments for the changes specified in 40 CFR 70.7(d)(1)(i)

through (iv). Because Michigan's rules impermissibly allow for a permit shield for these administrative amendments, the state's program does not comply with the requirements of the Act and 40 CFR part 70.

Title V provides for the approval of state programs for the issuance of operating permits that incorporate the applicable requirements of the Act. To receive title V program approval, a state permitting authority must submit a program to EPA that meets certain minimum criteria, and EPA must disapprove a program that fails, or withdraw an approved program that subsequently fails, to meet these criteria. These criteria include requirements for revising operating permits, including administrative amendments. 40 CFR 70.4(b)(16); *see* 40 CFR 70.7(d). Part 70 further provides that a permitting authority may grant a permit shield only in certain circumstances. 40 CFR 70.6(f) and 70.7(d)(4).

40 CFR 70.4 and 70.10(b) and (c) provide that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(c)(1)(i) lists a number of potential bases for program withdrawal, including the case where the permitting authority's legal authority does not meet the requirements of 40 CFR part 70.

40 CFR 70.10(b), which sets forth the procedures for program withdrawal, requires as a prerequisite to withdrawal that the EPA Administrator notify the permitting authority of any finding of deficiency by publishing a document in the **Federal Register**. Today's document satisfies this requirement and constitutes a finding of deficiency. According to 40 CFR 70.10(b)(2), if Michigan has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after issuance of this notice of deficiency, EPA may withdraw the state program, apply any of the sanctions specified in section 179(b) of the Act, and/or promulgate, administer, and enforce a federal title V program. 40 CFR 70.10(b)(3) provides that, if the state has not corrected the deficiency within 18 months after the date of the finding of deficiency and issuance of the NOD, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. In addition, 40 CFR 70.10(b)(4) provides that, if the state has not corrected the deficiency within 18 months after 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. The sanctions will go into effect unless the state has corrected this deficiency within 18 months after signature of this document.

This document is not a proposal to withdraw the state's title V program. Consistent with 40 CFR 70.10(b)(2), EPA will wait at least 90 days to determine whether the state has taken significant action to correct the deficiency.

III. EPA Responses to Citizen Comments

As discussed above, EPA is responding in writing to all timely comments that citizens submitted pursuant to the settlement agreement. For all comments not resulting in an NOD, EPA is responding directly to the commenter, explaining the reasons why EPA did not find that an NOD was warranted. 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. Finally, EPA will publish a national notice of availability in the **Federal Register** notifying the public that EPA has responded in writing to the commenters and explaining how the public may obtain a copy of EPA's responses.

IV. Administrative Requirements

Under section 307(b)(1) of the Act, petitions for judicial review of today's action may be filed under the United States Court of Appeals for the appropriate circuit within 60 days of December 11, 2001.

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

Dated: November 30, 2001.

Thomas V. Skinner,

Regional Administrator, Region 5.

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ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-7115-2]

Notice of Deficiency for Clean Air Act Operating Permit Program in Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to its authority at 40 CFR 70.10, EPA is publishing this Notice of Deficiency (NOD) for the State of Indiana's Clean Air Act title V

operating permit program. The NOD is based upon EPA's finding that several state requirements do not meet the minimum federal requirements of 40 CFR part 70 and the Act for program approval. Publication of this document is a prerequisite for withdrawal of Indiana's title V program approval, but EPA is not withdrawing the program through this action.

EFFECTIVE DATE: November 30, 2001. Because this NOD 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.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, EPA Region 5 (AR-18), 77 W. Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886-3189, E-mail Address: portanova.sam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

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). Sierra Club and the New York Public Interest Research Group challenged the action. In settling the litigation, EPA agreed to publish a document in the **Federal Register**, giving the public the opportunity to identify and bring to EPA's attention alleged deficiencies in title V programs. EPA published that document on December 11, 2000. 65 FR 77376.

As stated in the **Federal Register** document published on December 11, 2000 (65 FR 77376), EPA is responding by December 1, 2001 to timely public comments on programs that have obtained interim approval; and by April 1, 2002 to timely comments on fully approved programs. The EPA is publishing a NOD if the Agency determines that a deficiency exists, and is notifying the commenter in writing to explain the reasons for determining that other issues do not constitute a deficiency in the Indiana title V program. The EPA received two timely comment letters pertaining to the Indiana title V program. In reviewing the commenters' concerns, EPA determined that one commenter did identify deficiencies in Indiana's title V operating permit program.

II. Description of Action

EPA recognizes that the Indiana Department of Environmental Management (IDEM) has made an expeditious effort to correct the regulatory deficiencies identified by the commenter. These Indiana regulatory revisions, however, will not become

effective until after December 1, 2001. Therefore, the EPA is publishing a NOD for Indiana's Clean Air Act (Act) title V program. This document is being published to satisfy 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a state's title V permitting program no longer complies with the requirements of 40 CFR part 70 and the Act. The deficiencies being noticed are listed below. Because of IDEM's efforts to address these deficiencies as expeditiously as possible, EPA expects these regulatory deficiencies to be corrected by March 2002.

Under EPA's permitting regulations, citizens may, at any time, petition EPA regarding alleged deficiencies in state title V operating permitting programs. In addition, EPA may identify deficiencies on its own. If, in the future, EPA agrees with a new citizen petition or otherwise identifies deficiencies, EPA may issue a new NOD.

1. Permit Shield

Under the Indiana title V program, minor permit modifications, which are not subject to public review, qualify for a title V permit shield. This is not consistent with 40 CFR 70.7(e)(2)(vi), which provides that "the permit shield under 70.6(f) of this part may not extend to minor permit modifications." During EPA's original review of Indiana's title V program, which resulted in granting interim approval on November 14, 1995, the Indiana regulations required minor modifications to be subject to public review equivalent to that required by 40 CFR 70.6, 70.7 and 70.8, and allowed such modifications to qualify for a permit shield. In reviewing that original regulation, EPA determined that the permit shield was acceptable in this situation because of the availability of public review. Subsequent to the November 14, 1995, interim approval, Indiana modified its regulations to remove the public notice requirement from the minor modification provision. However, the state did not remove the permit shield provision. Because Indiana's rules allow for a permit shield for these minor modifications, the state's program does not meet the program approval requirements of title V and 40 CFR part 70. Indiana is in the process of correcting this provision to re-instate the public review requirements for minor modifications. Indiana will revise 326 IAC 2-7-12(b)(4) of the state regulations to require that minor permit modifications go through public review.