

US EPA ARCHIVE DOCUMENT

Errata: The 1-800-535-0202 phone number listed on page 4 of this document is no longer associated with EPA's Emergency Planning and Community Right to Know Hotline. The new number is 1-800-424-9346. Sorry for any confusion this may have created.

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 70**

[AD-FRL-5346-6]

Clean Air Act (CAA) Proposed Interim Approval of Operating Permits Program and Delegation of 112(l) Authority; State of Missouri**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the operating permits program submitted by the state of Missouri for the purpose of complying with Federal requirements for states which develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources. This notice explains EPA's rationale for the proposed action, and identifies revisions to the program which must be made before EPA can take final action to fully approve it.

DATES: Comments on this proposed action must be received in writing by January 16, 1996.

ADDRESSES: Comments should be addressed to Joshua A. Tapp, U.S. Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the Missouri submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the U.S. Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Joshua Tapp at (913) 551-7606.

SUPPLEMENTARY INFORMATION:**I. Background and Purpose****A. Introduction**

As required under Title V of the Clean Air Act (the Act) as amended (1990), 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 one year after receiving the submittal. The 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 two years. If EPA has not fully approved a program by two years after the November 15, 1993, date, or by the end of an interim period, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it would extend for 18 months following the effective date of final interim approval and could not be renewed. During the interim approval period, the state of Missouri would be protected from sanctions for failure to have an approved program, and EPA would not be obligated to promulgate, administer, and enforce a Federal permits program for Missouri. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the three-year time period for processing the initial permit applications.

Following the final interim approval, if Missouri has failed to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, an 18-month clock for mandatory sanctions would commence. If Missouri then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would apply sanctions as required by section 502(d)(2) of the Act, which would remain in effect until EPA determined that the state of Missouri had corrected the deficiency by submitting a complete corrective program.

If, following final interim approval, EPA were to disapprove Missouri's complete corrective program, EPA would be required under section 502(d)(2) to apply sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Missouri had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval.

If EPA has not granted full approval to Missouri's program by the expiration of an interim approval, EPA must promulgate, administer, and enforce a Federal permits program for Missouri upon interim approval expiration.

II. Proposed Action and Implications**A. Analysis of Submission by State Authority**

The analysis contained in this notice focuses on specific elements of the Missouri Department of Natural Resources (MDNR) Title V operating permits program that must be corrected to meet the minimum requirements of part 70. The full program submittal; the Technical Support Document (TSD), which contains a detailed analysis of the submittal; and other relevant materials are available for inspection as part of the public docket. The docket may be viewed during regular business hours at the address listed above.

1. Support Materials

The Governor of Missouri submitted an administratively and technically complete Title V Operating Permit Program on January 13, 1995. The EPA deemed the program submittal complete on March 2, 1995. At EPA's request, the State provided supplemental program information on August 14, 1995; September 19, 1995; and October 16, 1995.

The program submittal includes a legal opinion from the Attorney General of Missouri stating that the laws of the State provide adequate legal authority to carry out all aspects of the program, and a description of how the state intends to implement the program. The submittal additionally contains evidence of proper adoption of the program regulations, permit application forms, a data management system, and a permit fee demonstration.

2. Program Description

The Governor's letter states that the entire geography of Missouri will be covered by this program. There are no Indian tribal lands in Missouri. The letter also states that MDNR will be the official permitting authority responsible for implementation of the program. Finally, the state requested approval and delegation of authority to implement section 112(l) of the Act.

In addition to the state's part 70 permit rules, the state has established a State Implementation Plan (SIP) based permit system for creating Federally enforceable limitations, called the intermediate program. This permit mechanism will allow qualifying sources to avoid having to obtain a part

70 operating permit. The EPA published a direct final approval of this program in the Federal Register on September 25, 1995 (60 FR 49340). Finally, Missouri will issue a third class of permit to all other air emission sources that meet or exceed the de minimis levels, yet fall below the major source threshold. This third class of source will require a basic permit. The basic operating permit program is not a Federal program and has not been submitted to EPA for approval.

The state has been collecting emission fees for two years, which have been used for "ramp-up" activities, including the hiring of additional staff. The state emissions fee is currently set at \$25.70 per ton, which may be adjusted by the Missouri Air Conservation Commission through an administrative revision of rule 10 CSR 10-6.110. The state provided a resource demonstration, discussed later, to justify deviating from the presumptive minimum of \$25 per ton, Consumer Price Index (CPI) adjusted. The state is also authorized under its statute to collect fees for non-Title V program activities.

The program submittal also contains information on the organizational structure and function of the components of the air program, including the regional and local offices which are available to assist in implementation of the program.

3. Regulations and Program Implementation

The Missouri program, including the core operating permit regulations, 10-CSR 6.065 (Division 10, Chapter 6, MDNR) substantially meets the minimum requirements for interim approval as they are denoted in 40 CFR part 70.4(d)(3). These requirements pertain to: (1) Adequate fees, (2) applicable requirements, (3) fixed terms, (4) public participation, (5) EPA and affected state review, (6) permit issuance, (7) enforcement, (8) operational flexibility, (9) streamlined procedures, (10) permit application, and (11) alternative scenarios.

However, Missouri must make the following program revisions for full approval: (1) Revise its definitions rule, 10 CSR 10-6.020 to: (a) revise (2)(I)7 to update a reference to the Standard Industrial Classification Manual, and (b) revise (3)(B), Table 2—List of Named Installations, to make it consistent with the list in the definition of major source in 70.2; (2) revise rule 10 CSR 10-6.065, Operating Permits by: (a) revising (1)(D)2 to clarify the meaning of "fugitive air pollutant" as it relates to part 70 installations; (b) revise (3)(D) to clarify part 70 applicability with respect

to emissions from exempt installations and emission units; (c) revise (6)(C)1.C.(II)(b) to clarify the retention of record requirements in permits, consistent with 70.6(a)(3); (d) revise (6)(C)1.G.(I) to clarify the general requirements for permit compliance and noncompliance, consistent with 70.6(a)(6); (e) revise (6)(C)4.A. to correct a citation error and to clarify that the requirement for EPA and affected state review applies to general permits, consistent with 70.6(d)(1); (f) revise (6)(C)7.B.(IV) to make the emergency provision notice consistent with 70.6(g)(3); (g) revise (6)(C)8, operational flexibility provisions, to clarify the term "emissions allowable under the permit"; (h) revise (6)(E)5.B.(I), minor permit modification criteria, to be consistent with 70.7(e)(2)(I)(A)(3); (i) revise (6)(E)5.B.(I) to add a paragraph (b) to incorporate the economic incentive provisions consistent with 70.7(e)(2)(I)(B); (j) revise (6)(E)5.C.(I)(b) to correct the threshold for group processing of minor permit modifications to be consistent with 70.7(e)(2)(I)(B); and (k) revise (6)(E)5.D.(II)(a), significant permit modification procedures, to be consistent with 70.4(b)(2) and 70.5(c), and make minor citation corrections to rules (6)(B)3.I.(IV), (6)(E)5.B.(II)(a), (6)(E)5.C.(V), and (6)(E)6.C. A detailed discussion of the necessary rule revisions is included in the TSD, and in the docket for this rulemaking. In addition, the rule changes proposed by Missouri to meet the requirements noted above are included in the docket.

Missouri has the authority to issue a variance from state requirements under section 643.110 of the state statutes. This provision was not included by the state in its operating permit program submittal, and EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no action on this provision of state law. The EPA has no authority to approve provisions of state law, such as the variance provision referred to, which are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to obtain or comply with a Federally enforceable part 70 permit, except where such relief is granted through the procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance

or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements, notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

4. Fee Demonstration

The state provided a detailed fee demonstration because the emissions fee, \$25.70 per ton (not adjusted), is below the presumptive minimum of \$25 plus CPI. The fee demonstration included a detailed analysis of projected hourly program requirements and costs for each of the next four years. An emission inventory of Title V sources for two preceding years (1993 and 1994) and emissions fees collected was also provided. Missouri describes a cash receipts system that identifies Title V fee receipts, a time accounting system that tracks Title V program labor costs, and an accounts payable system that tracks Title V program expenses.

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

a. Authority and/or commitments for section 112 implementation. Missouri has demonstrated in its program submittal adequate legal authority to implement and enforce all section 112 requirements through the Title V permit. This legal authority is contained in Missouri's enabling legislation and in regulatory provisions defining "applicable requirements," and states that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Missouri to issue permits that ensure compliance with all section 112 requirements. The EPA is interpreting the above legal authority to mean that Missouri is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the TSD accompanying this rulemaking and the April 13, 1993, guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Section 112(g) Case-by-Case Maximum Achievable Control Technology (MACT) For Modified/Constructed and Reconstructed Major Toxic Sources.

The EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of 112(g) applicability.

The notice postpones the effective date of 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Missouri must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing Federal regulations.

The EPA is aware that Missouri lacks a program designed specifically to implement section 112(g). However, Missouri does have a program for review of new and modified hazardous air pollutant sources that can serve as an adequate implementation vehicle during the transition period, because it would allow Missouri to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit.

The EPA is proposing to approve Missouri's preconstruction permitting program under the authority of Title V and part 70, solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between 112(g) promulgation and adoption of a state rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of state air programs to implement section 112(g), Title V and section 112(g) provide for this limited approval because of the direct linkage between the 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 (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until state regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the 112(g) rule to provide adequate time for the state to adopt regulations consistent with the Federal requirements.

c. Section 112(l)—State Air Toxics Programs.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(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. Missouri has demonstrated that it meets these requirements. Therefore, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR part 63.91 to Missouri for its program mechanism for receiving delegation of all existing and future section 112(d) standards for both part 70 and non-part 70 sources, and section 112 infrastructure programs, that are unchanged from Federal rules as promulgated. Missouri has informed EPA that it intends to accept delegation of section 112 standards through adoption by reference. In addition, EPA is also proposing delegation of all existing standards and programs under 40 CFR parts 61 and 63 for part 70 and non-part 70 sources.

d. Title IV/Acid Rain. The legal requirements for approval under the Title V operating permits program for a Title IV program were cited in EPA guidance distributed on May 21, 1993, titled "Title V-Title IV Interface Guidance for States." Missouri has met the criteria of this guidance and has adopted by reference acid rain rules at 40 CFR 72.

B. Options for Approval/Disapproval and Implications

1. The EPA is proposing to grant interim approval for two years to the operating permits program submitted by the state of Missouri. In order to receive full approval, the state must adopt and submit to the EPA the rule changes identified above within 18 months of receiving final interim approval. Specifically, the state must amend rules 10 CSR 10-6.020, Definitions, and 10 CSR 10-6.065, Operating permits, for consistency with part 70.

2. Program for Straight Delegation of Section 112 Standards.

As discussed above, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR part 63.91 to Missouri for its program mechanism for receiving delegation of all existing and future section 112(d) standards for both part 70 and non-part 70 sources, and infrastructure programs under section 112 that are unchanged from Federal rules as promulgated. In addition, EPA proposes to delegate existing standards

under 40 CFR parts 61 and 63 for both part 70 and non-part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the state's submittal and other information relied upon for the proposed approval are contained in a docket maintained at 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 interim approval. The principal purposes of the docket are:

1. To allow interested parties a means to identify and locate documents for participating in the rulemaking process, and
2. To serve as the record in case of judicial review. The EPA will consider any comments received by January 16, 1996.

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.

D. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this state operating permit program the state has elected to adopt the program provided for under Title V of the CAA. These rules may bind the state government to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being proposed for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. The EPA has

also determined that this proposed action does not include a mandate that may result in estimated costs of \$100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 70

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

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

Dated: December 6, 1995.

Dennis Grams,
Regional Administrator.

[FR Doc. 95-30554 Filed 12-14-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 372

[OPPTS-400097B; FRL-4991-4]

Toxic Chemical Release Reporting; Community Right-to-Know; Reopening of Public Comment Period; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of public comment period; correction.

SUMMARY: In the Federal Register of October 27, 1995, EPA published an administrative stay of the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA), for 2,2-dibromo-3-nitropropionamide (DBNPA) (Chemical Abstracts Service (CAS) No. 10222-01-2). The administrative stay also requested comment on EPA's review of a petition to delete DBNPA from the EPCRA section 313 list of toxic chemicals. The period for accepting comments on EPA's review of the petition ended on November 27, 1995. EPA has received a request to extend the comment period and is granting that request by reopening the comment period for 45 days. In addition, this document corrects an error in the October 27, 1995 notice. The green algal toxicity value was incorrectly listed.

DATES: All comments must be received on or before January 29, 1996.

ADDRESSES: Written comments should be submitted in triplicate to: OPPT Docket Clerk (7407), TSCA Nonconfidential Information Center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS-400097. No CBI should be submitted through e-mail. Electronic comments on the information presented in this document may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT:

Maria J. Doa, Project Manager, 202-260-9592, e-mail:

doa.maria@epamail.epa.gov for specific information on this action. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 27, 1995 (60 FR 54949), EPA published an administrative stay of the reporting requirements under section 313 of EPCRA and section 6607 of the Pollution Prevention Act of 1990 (PPA) for DBNPA. EPA issued the administrative stay because EPA had incorrectly categorized the effects observed in certain data relating to DBNPA prior to promulgation of the final rule adding DBNPA to the EPCRA section 313 list of toxic chemicals.

The document also requested comment on EPA's review of a petition to delete DBNPA from the EPCRA section 313 list of toxic chemicals. EPA preliminarily determined that DBNPA can reasonably be anticipated to cause subchronic gastrointestinal effects, and can reasonably be anticipated to cause toxicity to freshwater green algae, chronic effects on freshwater invertebrates and chronic effects on oysters at relatively low concentrations. The period for accepting comments on EPA's review of the petition ended November 27, 1995. EPA has received a request to extend the comment period and is granting that request by reopening the comment period for 45 days. In addition, this notice corrects an error in the October 27, 1995 document. The green algal toxicity value was incorrectly listed.

I. Reopening of Public Comment Period

In the Federal Register of October 27, 1995, EPA requested public comment on the information presented in the document regarding the continued listing of DBNPA on the EPCRA section 313 list of toxic chemicals. In that notice, EPA stated that all comments must be received on or before November 27, 1995. In response to a request from Dow Chemical Company to extend the comment period, EPA is reopening the comment period for an additional 45 days. All comments must be received on or before January 26, 1996.

II. Green Algal Toxicity Value Correction

In the October 27, 1995 Federal Register, on page 54951, first column, second full paragraph, 24th line, the green algal 96-hour EC₅₀ (median effective concentration) for DBNPA was incorrectly listed as "0.010 mg/L"; the value should have read 0.08 mg/L.

III. Public Docket

A record has been established for the administrative stay under docket number "OPPTS-400097" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for the administrative stay, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting