

US EPA ARCHIVE DOCUMENT

is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO TN E2 Knoxville, TN [New]

Knoxville Downtown Island Airport, TN
(lat. 35°57'50" N, long. 83°52'25" W)

Within a 4.5-mile radius of Knoxville Downtown Island Airport, excluding that airspace within the Knoxville/McGhee-Tyson Airport, TN, Class C airspace area.

* * * * *

Issued in College Park, Georgia, on October 3, 1995.

Wade T. Carpenter,
*Acting Manager, Air Traffic Division,
Southern Region.*

[FR Doc. 95–25850 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–AGL–6]

Modification of Class E Airspace; Mount Vernon, IL; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airport designation of the Mount Vernon, Illinois, Class E2 airspace published in a final rule on August 16, 1995, Airspace Docket Number 95–AGL–6.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT:

William W. Kribble, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 95–20265, Airspace Docket 95–AGL–6, published on August 16, 1995, (60 FR 42430), modified the hours of the Mount Vernon, Illinois, Class E airspace. An error was discovered in the name of the airport. This action corrects that error by clarifying the name of the airport as Mount Vernon Airport.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for the Mount Vernon, Illinois, Class E airspace, as published in the Federal Register on August 16, 1995 (60 FR 42430) (Federal Register Document 95–20265; page 42430, column 3), is corrected in the amendment to the incorporation by reference in 14 CFR 71.1 as follows:

§ 71.1 [Corrected]

AGL IL E2 Mount Vernon, IL
[Corrected]

Mount Vernon Airport, IL
(Lat. 38°19'24" N, long. 88°51'31" W)

Mount Vernon-VOR/DME
(Lat. 38°21'43" N, long. 88°48'26" W)

Within a 4.2-mile radius of Mount Vernon Airport and within 4 miles each side of the Mount Vernon VOR/DME 044° radial extending from the 4.2-mile radius to 9.1 miles northeast of the VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on September 29, 1995.

Maureen Woods,
Acting Manager, Air Traffic Division.

[FR Doc. 95–25849 Filed 10–17–95; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5316–2]

Clean Air Act (CAA) Final Full Approval Of Operating Permits Programs; State of Nebraska, City of Omaha, and Lincoln-Lancaster County Health Department (LLCHD) and Delegation of 112(l) Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

SUMMARY: The EPA is promulgating full approval of the operating permits programs submitted by the state of Nebraska, city of Omaha, and LLCHD for the purpose of complying with Federal requirements for an approvable state program to issue operating permits to all major stationary sources and certain other sources. EPA is also approving, under section 112(l), all three programs for accepting delegation of section 112 standards to enforce air toxics regulations.

EFFECTIVE DATE: November 17, 1995.

ADDRESSES: Copies of the three submittals and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (“the Act”)), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70, require that states develop and submit operating permits 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 program), it must establish and implement a Federal program.

On January 31, 1995, EPA proposed full approval of the operating permits program for LLCHD (60 FR 5883–87). Furthermore, on April 3, 1995, EPA proposed approval of delegation for 112(l) for LLCHD (60 FR 16829–30). Public comments were received on (60 FR 5883–87) which are addressed in section II of this notice. None were received on 60 FR 16829–30.

On March 7, 1995, EPA proposed full approval of the operating permits program for the state of Nebraska and city of Omaha (60 FR 12521–24). The

EPA received public comments which are also addressed in section II of this notice. In this notice, EPA is taking final action to promulgate full approval of all three operating permit programs submitted within Nebraska, including delegation of 112(l) authority.

II. Public Comments

One party submitted comments on both of the two proposal notices. Although the letters are signed by different representatives, the same interest is represented by each and the comments are largely identical. A total of six comments will herein be addressed which answers all comments.

Comment #1: The approval date for all three programs should be the same, so that due dates for industry submissions triggered by the approval date will be uniform throughout the state.

EPA Response: Although two separate proposal notices were used, the EPA has combined the final action into one notice. Therefore, all three programs have the same approval date. It should be noted, however, that the effective date of the EPA approval is not necessarily the trigger date for certain source obligations under the state and local programs. For example, sources which apply for early permit processing under the state and local rules must submit complete applications by dates specified in the rules, which are not dependent on the effective date of EPA approval.

Comment #2: The annual inventory submission dates should be uniform for all three programs. The uniform date should be July 1 of each year, to correspond to the reporting deadline for toxic release inventory data under the Federal Emergency Planning and Community Right to Know Act (EPCRA).

EPA Response: Under Title V of the Act and part 70, the minimum requirements for EPA approval of state and local permitting programs contain no specific provisions governing the submission of annual emission inventory information, and no expressed or implied requirement relating to dates for submission of emission inventories. A state has the flexibility under part 70 to submit approvable programs which contain different dates for submission of emission information, at the discretion of the state.

EPA notes, in addition, that the inventory submission provisions referenced by the commenter state that annual inventories showing emissions for the prior calendar year must be submitted "by" July 1 (in the Nebraska rule) and "by" March 31 (in the

Lincoln-Lancaster rule). Thus, a source owner could submit inventories by March 31 in each jurisdiction and be in compliance with both rules. Similarly, a source owner could submit toxic release information by March 31, and be in compliance with the applicable EPCRA deadline.

Comment #3: A uniform fee schedule should be established throughout the state.

EPA Response: The city of Omaha and LLCHD have established fees of \$30.07 per ton of regulated air pollutant, while the state has adopted a fee slightly above this at \$30.69. Under 40 CFR 70.9(a), permitting agencies must assess fees that adequately cover the costs of administering the program, and must ensure that the fees will be used solely to cover Title V permit program costs. There is no requirement that fees be uniform within a state, so long as these minimum requirements are met. In fact, since the statewide permit program in Nebraska assesses fees on fewer pollutants (i.e., Nebraska, unlike the local permitting authorities, assesses fees only on smaller particulate emissions), EPA would anticipate that the amount per ton of pollutant would be higher for the state than for the local programs. Therefore, the EPA believes, for reasons detailed in the proposed rulemakings 60 FR 5883 and 60 FR 12521, that the fee requirements of section 70.9 have been met.

Comment #4: None of Nebraska's programs allow "off-permit" changes without a permit revision. EPA should require that the permitting authorities adopt criteria under which permitting authorities will allow changes not covered by the permit, without the need for a permit revision.

EPA Response: In 40 CFR 70.4(b)(14), EPA recognizes that permitting authorities may, as a matter of state or local law, prohibit sources from making certain changes which are not addressed in or prohibited by a permit ("off-permit" changes). EPA cannot require that states allow off-permit changes. Thus, this matter is within the discretion of the individual permitting agencies.

It is noted, however, that Title 129, Chapter 15:007 allows certain types of changes within a permitted facility without a permit revision ("Section 502(b)(10" changes). Interested sources should reference that provision.

Comment #5: Permitting agencies might use Title V fees to administer the Class II source program (the operating permit program for non-Title V sources). Nebraska should provide assurance that such fees will not be misdirected to non-Title V activities.

EPA Response: Fees collected under Title V may only be used for Title V activities. As stated in EPA's proposals on the state and local programs (at 60 FR 5885 and 60 FR 125223), the program submittals include a demonstration that separate funds have been created for handling the Title V fees. Permitting authorities will be expected to keep appropriate records to show that the fees are used only for activities relating to Title V.

There may be sources in the class II program, however, for which the state and local agencies may utilize Title V funding in permit processing (such as sources potentially subject to Title V, which take restrictions in Class II permits so that they will not be required to obtain Title V permits). EPA considers such permitting to be a valid Title V activity. However, the state must use other funds for permitting and other activities which have no relationship to the Title V program.

Comment #6: If more funds are generated than required, are there provisions to reduce future fee assessments?

EPA Response: In the program descriptions of all three submittals, the respective agencies identified a fee schedule that is anticipated to meet the costs of implementing the program(s). Furthermore, in each instance, the respective agencies have committed to reviewing the fee schedule on an annual basis once the actual costs of the program are determined. The Federal requirements do not prevent a permitting authority from later adjusting the fee schedule downward, as long as the minimum fee demonstration requirements of 40 CFR 70.9 are met.

III. Final Action and Implications

A. Fulfillment of EPA Requested Modifications

The January 31, 1995, Federal Register notice proposing approval of the LLCHD program outlined two requirements prior to final action: (1) modifying the regulations to ensure that all "applicable requirements" of the CAA (as defined in 40 CFR 70.2) are identified in permit applications and throughout the permitting process; and (2) modifying provisions relating to minor permit modifications to ensure that certain changes, which may be modifications under Title I of the CAA, would not qualify for minor permit revision processing. In the proposal, EPA suggested that it could approve the LLCHD program if it adopted changes substantially similar to those adopted by Nebraska in the state's December 2, 1994, rule (see 60 FR 5885). On May 16,

1995, the Lincoln-Lancaster Board of Commissioners adopted these modified amendments, based on the state's December 2, 1994, amendments, and these were submitted to EPA on May 23, 1995.

The March 7, 1995, Federal Register notice proposing approval for the state of Nebraska and city of Omaha programs also outlined two requirements prior to final action: the state must submit the December 2, 1994, amendments to Title 129, and the city of Omaha must incorporate these amendments by reference and submit them to EPA.

The state of Nebraska submitted these amendments on June 14, 1995, following signature by the Governor on May 29, 1995. On March 21, 1995, the city of Omaha adopted these amendments by reference to become effective 15 days after the state's December 2, 1994, amendments became effective (June 13, 1995—based on the May 29, 1995, approval by the Governor). Thus, all three agencies have met the final requirements for final full approval.

B. Variances

One issue of EPA concern with state programs is the ability of a part 70 source to obtain a waiver from any applicable requirement. The Nebraska Department of Environmental Quality (NDEQ) has the authority to issue a variance from requirements imposed by state law in Nebraska Revised Statute § 81-1513.

However, the EPA regards the Nebraska variance provision, and similar local agency regulatory provisions, as wholly external to the programs submitted for approval under part 70, and EPA is consequently taking no action on these variance provisions. The EPA has no authority to approve provisions of state and local authority, such as the variance provisions, 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 and comply with the terms of a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70.

The EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to obtain and comply with a part 70 permit in a manner inconsistent with part 70 requirements.

C. Final Action

1. *Regulations.* The EPA is promulgating full approval of the operating permits program submitted to

EPA for the state of Nebraska, city of Omaha, and LLCHD submitted on November 15, 1993. Each agency has demonstrated its respective program will be adequate to meet the minimum elements of an operating permits program as specified in 40 CFR part 70.

This approval includes the following regulations adopted by each agency:

a. NDEQ, Title 129, Nebraska Air Quality Regulations, amended May 29, 1995. This includes the following chapters of the regulations insofar as they apply to Title V: 1, 2, 5-15, 29, 40-44.

b. 1993 Lincoln-Lancaster County Air Pollution Control Program, Version March 1995, dated May 16, 1995. This includes the following citations insofar as they apply to Title V: Article 1, Sections 1-2, and 7; and Article 2, Sections 1, 2, 5-15, and 29.

c. Omaha Municipal Code, Section 41-2, 41-9 and 41-10; Ordinance 33506, dated March 21, 1995, which incorporates by reference Title 129.

2. *Jurisdiction.* The scope of the part 70 programs approved in this notice applies to all part 70 sources (as defined in the approved program), within the state of Nebraska, except any sources of air pollution over which an Indian Tribe has jurisdiction. See 59 FR 55813, 55815-18 (November 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian Tribe, Band, Nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians, because of their status as Indians." See section 302(r) of the CAA; 59 FR 43956, 43962 (August 25, 1994); 58 FR 54364 (October 21, 1993).

3. *112(l).* Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources, as well as sources not subject to part 70 requirements. 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. Therefore, the EPA is also promulgating full approval under section 112(l)(5) and 40 CFR 63.91 of these programs for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated.

4. *112(g).* 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), Nebraska 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 Nebraska lacks a program designed specifically to implement section 112(g). However, Nebraska does have a preconstruction review program that can serve as an adequate implementation vehicle during the transition period, because it would allow Nebraska to select control measures that would meet Maximum Available Control Technology, as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit.

EPA is approving Nebraska'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.

IV. Administrative Requirements

A. *Docket*

Copies of the three submittals and other information relied upon for the final full approval, including public comments received and reviewed by EPA on the proposal, 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 final full approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. *Executive Order 12866*

The Office of Management and Budget has exempted this 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 these operating permit programs, the state of Nebraska and two local agencies have elected to adopt the program provided for under Title V of the CAA. These rules bind these entities 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 statelaw. EPA has 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.

Dated: October 6, 1995.
Dennis Grams,
Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Appendix A to part 70 is amended by adding the entry for the state of Nebraska, the city of Omaha, and LLCHD to read as follows:

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

* * * * *

State of Nebraska; City of Omaha; Lincoln-Lancaster County Health Department

(a) The Nebraska Department of Environmental Quality submitted on November 15, 1993, supplemented by correspondence dated November 2, 1994, and August 29, 1995.

(b) Omaha Public Works Department submitted on November 15, 1993, supplemented by correspondence dated April 18, 1994; May 13, 1994; August 12, 1994; April 13, 1995; and April 19, 1995.

(c) Lincoln-Lancaster County Health Department submitted on November 15, 1993, supplemented by correspondence dated June 27, 1994. Full approval effective on: November 17, 1995.

(d) Reserved.

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[FR Doc. 95–25844 Filed 10–17–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 125

[FRL–5312–2]

Subpart K—Criteria and Standards for Best Management Practices Authorized Under Section 304(e) of the Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: This technical correction changes the title of the BMP guidance document from "NPDES Best Management Practices Guidance Document" to "Guidance Manual for Developing Best Management Practices

(BMP)", and it changes who to contact to obtain a copy of the document.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: Deborah G. Nagle at 202–260–2656.

SUPPLEMENTARY INFORMATION: This technical correction changes the title of the BMP guidance document from "NPDES Best Management Practices Guidance Document" to "Guidance Manual for Developing Best Management Practices (BMP)", and it changes who to contact in order to obtain a copy of the document.

EPA has determined that providing prior notice and opportunity for this correction is unnecessary since the rule changes no legal duties on any persons. For the same reasons, EPA believes there is good cause for making this correction to the CFR immediately effective. See 5 U.S.C. 553(d).

Because today's action simply changes an obsolete name and address, this action has no regulatory impact and is not a "significant" regulatory action within the meaning of E.O. 12866. It also does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandate Reform Act of 1995. For the same reasons, pursuant to the Regulatory Flexibility Act, I certify that this action would not have a significant economic impact on a substantial number of small entities. Finally, this correction does not affect requirements under the Paperwork Reduction Act.

List of Subjects in 40 CFR Part 125

Environmental protection, Reporting and record keeping requirements, Water pollution control, Waste and disposal.

Dated: October 12, 1995.

Robert Perciasepe,
Assistant Administrator.

Part 125 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 125—CRITERIA AND STANDARD FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 125 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C 1251 *et seq.*

2. Subpart K, section 125.104 is amended by revising the comment following paragraph (b)(4)(iii) to read as follows:

§ 125.104 Best management practices programs.

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