ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CT–066–7223; A–1–FRL–7158–3]

Full Approval of Operating Permit Program; State of Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On August 13, 2001, EPA proposed to approve changes that the State of Connecticut made to its operating permit program that addressed issues identified in EPA's interim approval action in 1997. Today, EPA is proposing to approve all other changes the state has made to its operating permit program regulations since EPA granted interim approval on March 24, 1997. With the combination of the August 2001 proposal and this proposal, EPA is proposing to fully approve Connecticut's entire title V program. Even though the earlier proposal was limited to the program changes necessary to address interim approval issues, EPA received several comments on Connecticut's title V program that went beyond the interim approval issues. In a future rulemaking document, EPA will address all comments we receive as a result of this document, as well as any comments that we have already received on Connecticut's program that concern the state's title V program. Connecticut's operating permit program was created to meet the federal Clean Air Act directive that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources of air pollution and to certain other sources within the state's jurisdiction.

DATES: Comments on this notice must be received on or before April 15, 2002.

ADDRESSES: Comments may be mailed to Donald Dahl, Air Permits Program Unit, Office of Ecosystem Protection (mail code CAP) U.S. Environmental Protection Agency, EPA—New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the state submittal and other supporting documentation relevant to this action are available for public inspection during normal business hours, by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Donald Dahl at (617) 918–1657.

SUPPLEMENTARY INFORMATION:

I. Why Was Connecticut Required To Develop an Operating Permit Program?

Title V of the Clean Air Act (''the Act'') as amended (42 U.S.C. 7401 *et seq.* and sections 7661–7661e), requires all states to develop an operating permit program and submit it to EPA for approval. EPA has promulgated rules that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs. See 57 FR 32250 (July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 (part 70). Title V directs states to develop programs for issuing operating permits to all major stationary sources and to certain other sources. The Act directs states to submit their operating permit programs to EPA by November 15, 1993, and requires 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 (42 U.S.C. 7661a) 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. EPA granted the State of Connecticut final interim approval of its program on March 24, 1997 (see 62 FR 13830) and the program became effective on April 23, 1997.

II. In 1995, What Did Connecticut Submit To Meet the Title V Requirements?

The Governor of Connecticut submitted a Title V operating permit program for the State of Connecticut on September 28, 1995. In addition to regulations (section 22a–174–33 of the Department of Environmental Protection Regulations), the program submittal included a legal opinion from the Attorney General of Connecticut 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 would implement the program. The submittal additionally contained evidence of proper adoption of the program regulations, application and permit forms, and a permit fee demonstration. This program, including the operating permit regulations, substantially met the requirements of part 70.

III. What Was EPA's Action on Connecticut's 1995 Submittal and How Did Connecticut Respond?

EPA granted interim approval to Connecticut's submittal on March 24, 1997. In the notice granting interim approval, EPA stated that there were several areas of Connecticut's program regulations that would need to be amended in order for EPA to grant full approval of the state's program. EPA worked closely with the state to develop all of the rule changes necessary to address EPA's interim approval issues. Connecticut proposed for public comment regulatory amendments that addressed EPA's interim approval issues on July 17, 2001. Based on the state's proposal, EPA in parallel proposed to approve those amendments because they addressed the interim approval issues. EPA's August 13, 2001 (66 FR 42496) proposal discussed those interim approval issues and the state's proposed regulations to address them, and this notice will not repeat that discussion. EPA notes, however, that Connecticut did adopt final regulations addressing the interim approval issues that were consistent with the changes EPA proposed to approve, and EPA continues to propose to approve these elements of the state's program for the reasons stated in our August 2001 proposal.

IV. In 2002, What Did Connecticut Submit To Revise Its Title V Permit Program?

On January 11, 2002, Connecticut submitted regulatory amendments to its title V operating permit program. The amendments to the state's regulations not only addressed the interim approval issues, but included changes to the balance of the state's program, largely designed to clarify the program requirements EPA had already approved in 1997. EPA has reviewed the remaining amendments, which the state made throughout portions of R.C.S.A. sections 22a–174–1 (the general definitions for DEP's air regulations), 22a–174–2a (air permitting procedural requirements), and 22a–174–33 (title V operating permit program requirements). Aside from minor alterations throughout these sections to clarify the operation of the title V program, the most important changes Connecticut has made include a major restructuring of the permit processing and modification requirements, which moves those provisions from section 33 to section 2a. In addition, to clarify its rules, in several areas the state incorporated by reference important sections of part 70. We propose that these changes meet title V permit program requirements, and that Connecticut's program should be fully approved under part 70. (This notice will generally simply cite to the section in part 70 for references to 40 CFR part 70 and will cite to the relevant section in Connecticut's air pollution control

regulations for references to R.C.S.A. 22a–174.)

V. Explanation of Certain Provisions in Connecticut's Regulatory Amendments To Its Title V Program

EPA believes that the following amendments to Connecticut's Title V program merit detailed discussion in light of Title V, part 70, and Connecticut law.

1. Section 22a–174–2a(f)(2)(D) in Connecticut's rule provides that the state can use its ''permit revision'' process not only to increase the frequency of monitoring, but also to add ''additional monitoring'' to the permit. EPA has consulted with DEP concerning the meaning of this provision, and the Department agrees that the plain reading of this language is that it allows DEP to add monitoring in addition to the monitoring already provided for in the permit using what is equivalent to EPA's administrative amendment process in § 70.7(d). Importantly, DEP confirms that this provision may not be used to change or in any way alter any existing monitoring requirements already provided for in the permit terms and conditions. Furthermore, DEP agrees that any monitoring added using this provision would be ''additional'' in the sense that it is in addition to any monitoring that is already required to be in the permit under the Act, its applicable requirements, and part 70. Therefore, this provision cannot be used to add monitoring necessary to meet the monitoring requirements of an applicable requirement, of § 70.6(a)(3)(B) regarding periodic monitoring, or of § 70.6(c)(1) regarding monitoring sufficient to assure compliance with the permit. Essentially, monitoring added under section 22a–174–2a(f)(2)(D) will be above and beyond what is required in the Act where DEP concludes that such data would be useful. An example of the kind of use DEP expects to make of this provision would be: a municipal waste combustor has a permit with sufficient periodic monitoring consistent with applicable requirements, but the state and source agree that they want to try a novel and experimental continuous emissions monitor to track hazardous VOC emissions. Section 22a–174–2a(f)(2)(D) would allow DEP to authorize installation of the CEM expeditiously to try it out without any permit shield.

This provision does not correspond exactly to the types of administrative amendments already provided for in § 70.7(d)(1). But § 70.7(d)(1)(vi) allows EPA to approve other types of permit changes that can be processed as administrative amendments, provided EPA determines that the change is similar to the changes specifically listed in § 70.7(d)(1)(i)–(iv). EPA is proposing to use this authority to approve the ability for Connecticut to add ''additional monitoring'' to a title V permit, beyond the monitoring already provided for in the permit, using the state's ''permit revision'' process in section 22a–174–2a(f)(2)(D). EPA is relying on the fact that an existing permit will already contain monitoring which the public and EPA have had an opportunity to review and which must be consistent with the applicable requirements and Part 70's monitoring requirements. See sections 22a–174–33(j)(1)(K) and (L). Additionally, DEP cannot use this provision to affect monitoring that is required under the Act. EPA believes this type of change is similar to the type of changes listed in §§ 70.7(d)(1)(i)–(v) because it will not alter the requirements or stringency of the existing permit, it will generally increase the rigor of the compliance requirements in the permit, and it cannot affect monitoring requirements mandated under the Act. This very limited authority is similar to the concept of increasing the frequency of monitoring under § 70.7(d)(1)(iii), which allows monitoring to be adjusted in a way that will tend to increase its rigor and will not undercut the monitoring required to meet the Act's requirements. Therefore, EPA proposes to approve section 22a–174–2a(f)(2)(D) pursuant to § 70.7(d)(1)(vi) because it is similar in kind to types of changes in §§ 70.7(d)(1)(i)–(v).

2. Section 22a–174–2a(d)(4)(C) of Connecticut's regulations specifically requires the equivalent of a significant permit modification procedure under § 70.7(e)(4) (a ''non-minor modification'' as denominated in section 22a–174–2a(d)) to ''relax the form or type of or any reduction in the frequency of any monitoring, reporting or recordkeeping required by the title V permit.'' This provision is not identical to the requirement in § 70.7(e)(4) that ''every significant change in existing monitoring'' must undergo the significant permit modification procedure. It could be unclear, for example, how one must process a significant change in monitoring that has an indeterminate effect on the rigor of the permit, i.e. which may or may not ''relax'' the monitoring. Nonetheless, EPA interprets section 2a to mean that all significant monitoring changes must go through the ''non-minor modification'' process, and Connecticut agrees with EPA's interpretation. Section 22a–174–2a(e)(2)(B), a provision of Connecticut's ''minor permit modification'' regulations, excludes any significant change to monitoring from the minor permit modification track, by way of incorporating the exclusions in EPA's rule, including § 70.7(e)(2)(i)(A)(2). It is equally clear that significant changes in monitoring do not qualify for the administrative amendment track, or a ''permit revision'' under section 22a–174–2a(f) of Connecticut's rule. Pursuant to section 22a–174–2a(d)(4)(D), any change that does not qualify under the other permit modification tracks must be made using significant modification procedures under the ''non-minor modification'' track of 22a–174–2a(d). Therefore, section 22a–174–2a handles significant changes in monitoring consistent with § 70.7(e)(4).

3. Connecticut's provision for administrative permit amendments, or ''permit revisions'' under section 22a–174–2a(f), includes ''a fuel conversion described in section 22a–174–3a(a)(A)(iv) or (v)'' in the list of changes that can be made administratively. Section 22a–174–2a(f)(2)(G). [1] This cross reference is to a provision in the state's revised new source review program that exempts from preconstruction permitting certain limited conversions from oil to natural gas or from residual oil to distillate oil. While it is expected that these conversions to cleaner fuels will generally result in beneficial emissions reductions, on the face of the regulation this exemption allows for actual emissions increases of up to fifteen tons per year. As a result, it is difficult to reconcile the terms of this fuel conversion provision with the sort of administrative amendment changes provided for in § 70.7(d)(1), which are designed to have no emissions impact. However, another provision of Connecticut's regulations, section 22a–174–2a(e)(2), requires these fuel conversions to undergo a minor permit modification. Specifically, section 22a–174–2a(e)(2)(A) allows only those changes covered by ''2a(f)(2)(A) through (F), inclusive'' to avoid a minor permit modification, with no reference to section 2a(f)(2)(G). Therefore, the fuel conversions provided for in section 22a–174–2a(f)(2)(G) are captured as minor permit amendments, not administrative amendments, which is consistent with §§ 70.7(d) and (e)(2).

4. Connecticut's definition of ''applicable requirements'' at section 22a–174–33(a)(2) does not include a

[1] It appears that the cross reference is probably intended to read ''section 22a–174–3a(a)(A)(iii) or (iv).''

reference to the national ambient air quality standards as they would apply to temporary sources, as provided for in § 70.2. See ''applicable requirement,'' clause (12). Connecticut's program is nevertheless consistent with part 70 and the Act because the state does not permit temporary sources under its section 33 regulation. Section 504(e) of the Act allows, but does not require, states to issue a single permit authorizing emissions from similar operations at multiple temporary locations. Connecticut has chosen not to implement this provision. Section 22a–174–33(c)(1) requires that ''every Title V source'' apply for a permit. Section 22a–174–33(a)(10) defines a Title V source to be at a ''premises.'' Section 22a–174–1(88) defines ''premises'' to be the ''grouping of all stationary sources *at any one location*'' (emphasis added). Having required a source to receive a section 33 permit for any one location, Connecticut lacks the authority to permit temporary sources at multiple locations pursuant to section 504(e) of the Act. Accordingly, Connecticut is not required to address ambient standards as an applicable requirement under section 22a–174–33 for temporary sources at multiple locations.

5. Section 22a–174–33(j)(1)(I) is the provision in Connecticut's program designed to implement § 70.6(a)(1)(iii) of EPA's regulation, providing for a title V permit to establish alternative emission limits to the extent allowed in the underlying implementation plan. The previous version of Connecticut's regulation provided for the title V permit to address ''allowable alternative emission limits,'' which was consistent on its face with the requirement that these alternative limits must be allowed in the underlying applicable requirement. The new version of this section provides for the permit to address ''alternative emission limits or means of compliance *allowed by the Commissioner*'' (emphasis added). This new formulation creates the unintended implication that Connecticut is providing the Commissioner with broad discretion to use the title V permit to fashion alternative limits, even where they are not provided for in the underlying implementation plan. Connecticut did not intend this language change to create such discretion, and the surrounding provisions in section 22a–174–33 make this clear. Section 22a–174–33(j)(1)(H) requires each permit to impose the terms of each applicable requirement to each emission unit, and section 22a–174–33(j)(1)(J) requires all alternative operating scenarios to meet all applicable requirements. Nothing in section 22a–174–33(j)(1)(I) waives these requirements that a permit must impose the applicable requirements, and Connecticut agrees that alternative emission limits addressed under 22a–174–33(j)(1)(I) must be allowed under the applicable requirements. Therefore, this section is consistent with § 70.6(a)(1)(iii).

6. In section 22a–174–2a(f)(2)(F) the state incorporates § 70.7(d)(1)(v) which allows Connecticut to add the terms of a new source review permit to the title V permit using the state's permit revision (or administrative amendment) track if the new source review permit program meets procedural requirements substantially equivalent to §§ 70.7 and 70.8 and permit content requirements substantially equivalent to § 70.6. Connecticut's new source review program does not currently meet the requirements of §§ 70.6, 70.7 and 70.8. Therefore, the state cannot incorporate new source review permits into a title V permit using its permit revision track. EPA understands that section 22a–174–2a(f)(2)(F) is essentially a place-holder that would allow the state to bring a new source review permit onto the title V permit administratively in the event Connecticut augments its new source review regulation to incorporate the relevant part 70 procedural and substantive requirements. Connecticut agrees with this understanding and with the limitation on its authority under section 22a–174–2a(f)(2)(F).

VI. Proposed Action and Opportunity to Comment

EPA is proposing to approve the balance of the changes Connecticut has made to its title V operating permit program, along with those changes already discussed in our August 2001 notice. Interested members of the public may comment on those changes, as described above. Note that most of the comments EPA received in response to our August 2001 proposal concerning the interim approval issues included comments addressing the entirety of Connecticut's title V program changes. EPA will be responding to all those comments when we take final action on the August 2001 proposal and this proposal. The public need not resubmit comments already made in response to our August 2001 proposal.

In particular, EPA solicits comments from the State of Connecticut. In this proposal, EPA has interpreted various Connecticut regulations in a manner that EPA believes to be most consistent with the Act and part 70. If Connecticut disagrees with or wishes to support EPA's interpretations, EPA encourages the state to comment during the public comment period so that EPA may respond when we take final action on this proposal and the August 2001 proposal.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing permit program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no clear authority to

disapprove a permit program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a permit program submission, to use VCS in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

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.

Dated: March 6, 2002.

Robert W. Varney,

Regional Administrator, EPA—New England.

[FR Doc. 02–6273 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7153–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by the United States Department of Energy Savannah River Operations Office (DOE–SR) to exclude (or ''delist'') certain hazardous wastes from the lists of hazardous wastes under the Resource Conservation and Recovery Act (RCRA). DOE–SR generated the petitioned waste by treating wastes from various activities at the Savannah River Site (SRS). The petitioned waste meets the definitions of listed RCRA hazardous wastes F006 and F028. DOE–SR petitioned EPA to grant a one-time, generator-specific delisting for its F006 and F028 waste, because DOE–SR believes that its waste does not meet the criteria for which theses types of wastes were listed. The waste is a radioactive mixed waste (RMW) because it is both a RCRA hazardous waste and a radioactive waste. EPA reviewed all of the waste-specific information provided by DOE–SR, performed calculations, and determined that the waste, which has a low level of radioactivity, could be disposed in a landfill for low-level radioactive waste without harming human health and the environment. The petition is for a one-time delisting, because the petitioned waste has been generated, will be completely disposed of at one time, and will not be generated again. Today's proposed rule proposes to grant DOE–SR's petition to delist its F006 and F028 waste, and requests public comment on the proposed decision. If the proposed delisting becomes a final delisting, DOE–SR's petitioned waste will no longer be classified as F006 and F028, and will not be subject to regulation as a hazardous waste under Subtitle C of RCRA. The waste will still be subject to the Atomic Energy Act and local, State, and Federal regulations for low-level radioactive solid wastes that are not RCRA hazardous wastes.

DATES: EPA is requesting public comments on this proposed decision. Comments will be accepted until April 29, 2002. Comments postmarked after the close of the comment period will be stamped ''late.'' These ''late'' comments may not be considered in formulating a final decision.

Any person may request a hearing on this proposed decision by filing a request with Richard D. Green, Director of the Waste Management Division, EPA, Region 4, whose address appears below, by April 1, 2002. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send two copies of your comments to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303. Send one copy to Myra C. Reece, Director, South Carolina Department of Health and Environmental Control, Lower Savannah District Environmental Quality Control, 218 Beaufort Street, N.E., Aiken, South Caolina 29801, and one copy to Shelly Sherritt, Bureau of Land and Waste Management, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201. Identify your comments at the top with this regulatory docket number: R4–01–02–DOESRSP. Comments may also be submitted by e-mail to *sophianopoulos.judy@epa.gov.* If files are attached, please identify the format.

Requests for a hearing should be addressed to Richard D. Green, Director, Waste Management Division, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

The RCRA regulatory docket for this proposed rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The docket contains the petition, all information submitted by the petitioner, and all information used by EPA to evaluate the petition.

The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

Copies of the petition are available during normal business hours at the following addresses for inspection and copying: U.S. EPA, Region 4, Library, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8190; South Carolina Department of Health and Environmental Control, Lower Savannah District Environmental Quality Control, 218 Beaufort Street, N.E., Aiken, South Carolina 29801, Myra C. Reece, Director, Phone: (803) 641–7670; and DOE Public Reading Room, Gregg-Graniteville Library, University of South Carolina at Aiken, 171 University Parkway, Aiken, South Carolina 29801, Phone: (803) 641–3465.

The EPA, Region 4, Library is located near the Five Points MARTA station in Atlanta. The Lower Savannah District Environmental Quality Control Office of the South Carolina Department of Health and Environmental Control is located a block north of U.S. Highway 78 on Beaufort Street (State Road 118) which is near the eastern boundary of Aiken. The University of South Carolina at Aiken is located on University Parkway (also State Road 118), on northwest boundary of Aiken, between Interstate Highway 20 and U.S. Highway