



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2012-0650; FRL-9789-9]

**Approval and Promulgation of Air Quality Implementation Plans;
Indiana; Consent Decree Requirements**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a portion of Indiana's construction permit rule for sources subject to the state operating permit program regulations at 40 CFR Part 70. These provisions authorize the state to incorporate terms from Federal consent decrees or Federal district court orders into these construction permits. EPA is also approving public notice requirements for these permit actions. These rules will help streamline the process for making Federal consent decree and Federal district court order requirements permanent and Federally enforceable.

DATES: This direct final rule will be effective [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless EPA receives adverse comments by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2012-0650, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: damico.genevieve@epa.gov.
3. Fax: (312) 385-5501.
4. Mail: Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 AM to 4:30 PM, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No.

EPA-R05-OAR-2012-0650. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment

includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain

other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Sam Portanova, Environmental Engineer, at (312) 886-3189 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-3189, portanova.sam@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is being addressed in this document?
- II. What are the changes that EPA is approving?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews.

I. What is being addressed in this document?

EPA is approving 326 IAC 2-7-10.5(b) as a revision to Indiana's State Implementation Plan (SIP). This provision authorizes Indiana to issue construction permits to sources subject to the state operating permit program regulations at 40 CFR part 70 (part 70 sources) that include requirements from Federal district court orders of adjudication and Federal consent decrees. Permits incorporating these requirements are issued to sources that are subject to Title V of the Clean Air Act (CAA). EPA is also approving 326 IAC 2-7-10.5(k), which requires public notice procedures for these permit revisions.

II. What are the changes that EPA is approving?

On August 9, 2012, the Indiana Department of Environmental Management (IDEM) submitted a SIP revision request to EPA for revisions to the State's part 70 source construction permit rules. If approved, the first revision would allow provisions from Federal district court orders of adjudication and Federal consent decrees to be incorporated into construction permits issued to sources that are subject to title V of the CAA. The SIP submittal also included a second rule revision to include public notice requirements for these permitting actions. Indiana filed these rule revisions on February 6, 2012, and they became effective on March 8, 2012.

The rule revision in 326 IAC 2-7-10.5(b) provides for the

incorporation of control requirements and emission limits set forth in a Federal district court order that adjudicates violations or a Federal consent decree that is entered into for the purpose of resolving alleged violations of the following: 1) prevention of significant deterioration provisions, 2) nonattainment new source review requirements, 3) Section 112(g) and 112(j) of the CAA, or 4) 326 IAC 20 (state rules for National Emission Standards for Hazardous Air Pollutants).

The rule revision in 326 IAC 2-7-10.5(k) requires that construction modification approval proceedings under 326 IAC 2-7-10.5 provide for adequate opportunity for public notice established in 326 IAC 2-1.1.6 and 326 IAC 2-7-17. 326 IAC 2-1.1-6 is a SIP-approved rule that contains public notice requirements for sources subject to 326 IAC Article 2. 326 IAC 2-7-17 is the portion of Indiana's Federally approved title V program that contains public notice requirements for title V sources.

EPA has not previously undertaken rulemaking on 326 IAC 2-7-10.5, but has determined that the provisions of 326 IAC 2-7-10.5(b) and (k) are severable from other sections of that rule. Therefore, this approval does not affect the SIP approval status of the other portions of this rule.

The provision in 326 IAC 2-7-10.5(b) allows IDEM to

establish the provisions of Federal consent decree and Federal court orders as Federally enforceable conditions in state-issued part 70 source construction permits, which are permits issued pursuant to programs approved under title I of the CAA. Upon their inclusion in the construction permits, the consent decree and consent order provisions become "applicable requirements" under 40 CFR 70.2, and will become part of a source's title V permit through a title V permit modification. Once incorporated into a construction permit under 326 IAC 2-7-10.5(b), the Federal consent decree and consent order provisions will become permanently enforceable by both IDEM and EPA. It should be noted, however, that this rule does not cause these requirements to be incorporated directly into the SIP.

III. What action is EPA taking?

EPA is approving Indiana's part 70 source construction permit rule provisions at 326 IAC 2-7-10.5(b) and 326 IAC 2-7-10.5(k). We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective [INSERT DATE 60 DAYS FROM THE DATE

OF PUBLICATION IN THE FEDERAL REGISTER] without further notice unless we receive relevant adverse written comments by [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will

submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the

proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 4, 2013.

Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52-- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.770 the table in paragraph (c) is amended by adding a new entry in "Article 2. Permit Review Rules" for "Rule 7.

Part 70 Permit Program" in numerical order to read as follows:.

§ 52.770 Identification of plan.

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(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana Citation	Subject	Indiana Effective Date	EPA Approval Date	Notes
* * *	* * *	* *		
Article 2. Permit Review Rules				
* * *	* * *	* *		
Rule 7. Part 70 Permit Program				
2-7-10.5	Part 70 permits; source modifications	03/7/2012	[INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS]	(b) and (k) only.
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Date: 03/15/2013]