



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA-R02-OAR-2015-0837; FRL-9948-31-Region 2]

Clean Air Act Title V Operating Permit Program Revision;

New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the New Jersey title V Operating Permit Program requested by the New Jersey Department of Environmental Protection (NJDEP) on May 15, 2015. NJDEP adopted a rule revision on December 29, 2014, to change the fee schedule for certain permitting activities for major facilities, including application fees for significant modifications and fees to authorize general operating permit registration and operation of used oil space heaters. The adopted rule took effect on February 27, 2015. NJDEP submitted a request to EPA to incorporate the revised fee schedule into its Operating Permit Program. EPA proposes to approve the requested change as a revision to the NJOPP.

DATES: Comments must be received on or before [**insert date 30 days after date of publication in the Federal Register**].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R02-OAR-2015-0837, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Suilin Chan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4019.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following items:

I. Background

EPA granted full approval of the New Jersey title V Operating Permit Program on December 5, 2001 (66 FR 63168). The New Jersey Operating Permit Program (NJOPP) is implemented through its Operating Permits Rule codified at Subchapter 22 of Chapter 27 of Title 7 of the New Jersey Administrative Code (N.J.A.C. 7:27-22). As mandated by title V of the Clean Air Act (CAA) as well as its implementing regulations found in part 70 of Title 40 of the Code of Federal Regulations (40 CFR part 70), an approved State must establish a fee schedule that results in the collection and retention of revenues sufficient to cover the direct and indirect costs of implementing the State's operating permit program. NJDEP periodically adjusts the title V fee schedule stipulated at N.J.A.C. 7:27-22 to ensure that the NJOPP is adequately funded by fees collected from subject sources. EPA's evaluation of New Jersey's title V fee program during a program audit conducted in 2012 showed that the fees collected by New Jersey were insufficient to cover the costs of administering the NJOPP. The NJOPP has a deficit carried over year after year that accumulated to \$7.5 million dollars as of fiscal year (FY) 2011. As of FY 2014, the cumulative shortfall

was over \$10 million dollars. New Jersey is required to resolve the funding issue by taking all necessary actions.

II. Summary of Program Revision

On December 29, 2014, New Jersey finalized rule revisions to amend certain fee provisions for major facilities in its Operating Permits Rule, codified at N.J.A.C. 7:27-22. For significant modifications, NJDEP charges major facilities base fees for straightforward applications and adds supplementary fees for more complex applications. The prior fee schedules for significant modifications were found at N.J.A.C. 7:27-22.31(r), (s), (v) and (w). These provisions expired on December 29, 2014 and have now been deleted. New Jersey's revision replaces these provisions with a new Base Fee Schedule and Supplementary Fee Schedule for significant modifications, found at N.J.A.C 7:27-22.31(y) and N.J.A.C 7:27-22.31(z) respectively.

New Jersey's revision also updated the fee schedule for a major facility's registration under a General Operating Permit and authorization to operate a used oil space heater. The prior fee schedule for these actions was located at N.J.A.C. 7:27-22.31(t) and (x) and expired on December 29, 2014. New Jersey's revision deletes those provisions and replaces them with a new fee schedule at N.J.A.C. 7:27-22.31(aa).

Finally, New Jersey's revision updates other provisions of the Operating Permits Rule to reflect references to the new fee schedules rather than the prior now-deleted provisions, including at N.J.A.C. 7:27-22.1 (definition of "probe") and N.J.A.C. 7:27-22.31(a) (6), (e), (k) (1), (k) (2), (p) and (u) (4), (5), (7), and (9). For details of New Jersey's revision of its Operating Permits Rule, please refer to the public docket.

New Jersey has found that these increases in fees are necessary to provide additional funding to help reduce the deficit for the NJOPP, and the rule changes effectuating the increases have undergone the State's complete rulemaking process. On May 15, 2015, NJDEP submitted a request that these revisions to its Operating Permits Rule be incorporated into New Jersey's Operating Permit Program as a program revision, in accordance with 40 CFR 70.4(i).¹ This proposed rule would grant that request.

III. Proposed Action

The State of New Jersey has adopted rule revisions to increase the base and supplementary fees for significant modifications at major facilities, at N.J.A.C. 7:27-22.31(y) and (z), and registration fees for major facilities' use of General

¹ In the same document, NJDEP submitted rule revisions related to minor facilities fees found at N.J.A.C. 7:27-8 as a SIP submittal. This SIP submittal will be addressed in a separate rulemaking.

Operating Permits and authorization to operate used oil space heaters at N.J.A.C. 7:27-22.31(aa). The rule revisions also deleted outdated fee provisions at 7:27-22.31(r)-(t) and (v)-(x) and updated cross-references found in N.J.A.C. 7:27-22.1 (definition of "probe") and N.J.A.C. 7:27-22.31(a)(6), (e), (k)(1), (k)(2), (p) and (u)(4), (5), (7), and (9). The rule revisions were adopted in accordance with the state's rulemaking procedures on December 29, 2014. The rule changes are necessary to increase fee revenues to fund the NJOPP. The requirement that revenues collected from sources subject to a state's Operating Permits Program provide funding sufficient to cover the permit program's costs is mandated by title V of the CAA and its implementing regulations at 40 CFR 70.9. In today's action, pursuant to 40 CFR 70.4(i)(2), EPA is proposing to approve NJDEP's May 15, 2015 request to incorporate New Jersey's Operating Permits Rule (N.J.A.C. 7:27-22) as revised on December 29, 2014 as a revision to New Jersey's Operating Permit Program. EPA is soliciting public comments on EPA's proposed action to incorporate the revised rule into the NJOPP. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed 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.*). It also 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).

Because this rule proposes to approve 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 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will 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).

This action also does not have federalism implications because it does not 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). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act.

This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 *note*, requires Federal agencies to use technical standards that are developed

or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing State Operating Permit Programs submitted pursuant to title V of the Clean Air Act, EPA will approve such regulations provided that they meet the requirements of the CAA and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove such regulations for failure to use VCS. It would, thus, be inconsistent with applicable law for EPA, when it reviews such regulations, to use VCS in place of a State regulation that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the NTTAA do not apply.

This proposed 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.

AUTHORITY: 42 U.S.C. 7401 et seq.

Dated: June 14, 2016.

Judith A. Enck,

Regional Administrator,

Region 2.

[FR Doc. 2016-15004 Filed: 6/23/2016 8:45 am; Publication Date: 6/24/2016]