



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA-R03-OAR-2015-0594; FRL-9935-09-Region 3]

Clean Air Act Title V Operating Permit Program Revision; West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the West Virginia Title V Operating Permit Program submitted by the State of West Virginia on June 17, 2015. The West Virginia Title V Operating Permit Program is implemented through its “Requirement for Operating Permits” rule, codified at Title 45, Series 30 of the West Virginia Code of State Regulations (45CSR30). The June 17, 2015 revision amends West Virginia 45CSR30 to increase the annual Title V operating permit fees collected by the West Virginia Department of Environmental Protection (WVDEP). The Title V Operating Permit fees paid annually by individual Title V operating permit holders are used by the WVDEP to implement and oversee the West Virginia Title V Operating Permit Program. This action is being taken under section 502 of the Clean Air Act (CAA).

DATES: Written 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 Number EPA-R03-OAR-2015-0594 by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. E-mail: Campbell.Dave@epa.gov

C. Mail: EPA-R03-OAR-2015-0594, David Campbell, Associate Director, Office of Permits and State Programs, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2015-0594. 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 electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Paul Wentworth, (215) 814-2183, or by e-mail at wentworth.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA granted full approval of the West Virginia Title V Operating Permit Program effective November 19, 2001. *See* 66 FR 50325. Under 40 CFR 70.9(a) and (b), an approved state Title V operating permits program must require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and ensure that any fee required under 40 CFR 70.9 is used solely for permit program costs. The fee schedule must

result in the collection and retention of revenues sufficient to cover the permit program implementation and oversight costs.

West Virginia's initial Title V permit emission fee, established in 1994 at 45CSR30.8, was \$18 per ton of regulated pollutant as emitted by individual sources subject to the West Virginia Title V Operating Permit Program. Subject sources are not required to pay annual fees for emissions in excess of 4,000 tons per year. West Virginia's fee has been not been increased or adjusted since 1994.

West Virginia has determined that its Title V annual emission fee revenues collected are no longer sufficient to cover the cost of implementing and overseeing the West Virginia Title V Operating Permit Program. Installation of air pollution control technology over the past two decades on major stationary sources, the retirement or curtailment of operations by major sources, and the conversion at many major facilities from burning coal or oil to burning natural gas have resulted in significant reductions in the emission of regulated pollutants that are subject to annual emission fees. Thus, the amount of annual Title V Operating Permit fees West Virginia has collected has decreased dramatically.

Therefore, West Virginia amended its fee provisions at 45CSR30.8 to increase the annual emission fee from \$18 per ton to \$25 per ton of regulated pollutant as emitted by individual sources subject to the West Virginia Title V Operating Permit Program. Fees remain capped at 4,000 tons per year from an individual source. West Virginia has submitted this program revision for review and action by EPA.

II. Summary of Program Revision

In the June 17, 2015 program revision submittal, West Virginia included revisions to 45CSR30.8 which

was amended to increase West Virginia's annual emission fees for its Title V Operating Permit Program. Annual fees are increased to \$25 per ton of emissions of a regulated pollutant from an individual source subject to the West Virginia Title V Operating Permit Program. The previous rate was \$18 per ton of regulated pollutant. Fees are capped at 4,000 tons per year from an individual source. The revised fee rate is designed to cover all reasonable costs required to implement and administer the West Virginia Title V Operating Permit Program as required by 40 CFR 70.9(a) and (b). These costs include those for activities such as: reviewing and processing preconstruction and operating permits, conducting inspections, responding to complaints and pursuing enforcement actions, emissions and ambient air monitoring, preparing applicable regulations and guidance, modeling, analyses, demonstrations, emission inventories, and tracking emissions.

Without this fee increase, West Virginia anticipates funds will not be sufficient to adequately sustain its Title V Operating Permit Program in a manner that is consistent with state and Federal requirements. If funds were to become insufficient to sustain an adequate Title V program in West Virginia, EPA may determine that West Virginia has not taken "significant action to assure adequate administration and enforcement of the Program" and take subsequent action as required under 40 CFR 70.10(b) and (c) which could lead to EPA withdrawal of approval of the West Virginia Title V Operating Permit Program. Were that to occur, EPA would have the authority and obligation to implement a Federal Title V operating permit program in West Virginia pursuant to 40 CFR part 71. The withdrawal of program approval could also lead to the imposition of mandatory and discretionary sanctions under the CAA.

III. EPA Analysis of Program Revision

The June 17, 2015 Title V Operating Permit Program revision consists of amendments to West Virginia's rules which establish annual emission fees under Title V of the CAA. This rulemaking proposes approval of West Virginia's increase of the annual Title V fees paid by the owner or operator of a Title V facility in West Virginia from \$18 per ton of regulated air pollutant to \$25 per ton because the revision meets requirements in section 502 of the CAA and 40 CFR 70.9 for the collection of sufficient Title V fees to cover permit program implementation and oversight costs. The emission fees apply to emissions up to 4,000 tons of any regulated pollutant. The proposed revision does not establish a fee structure for carbon dioxide or other greenhouse gases (GHGs). EPA's rules do not mandate revisions to state Title V programs to account for GHG emissions.

IV. Proposed Action

Pursuant to 40 CFR 70.4(i)(2), EPA is proposing to approve a revision to the West Virginia Title V Operating Permit Program submitted on June 17, 2015 to increase the annual Title V fees paid by the owners or operators of all facilities required to obtain an operating permit under the West Virginia Title V Operating Permit Program. The revision meets the relevant requirements of section 502 of the CAA and 40 CFR 70.9. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. For that reason, this proposed 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 proposed approval of the revision to West Virginia's Title V Operating Permit Program which increases permit fees does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the program 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.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, 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.

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

Dated: September 21, 2015.

Shawn M. Garvin,
Regional Administrator,
Region III.

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