



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA-R03-OAR-2025-1614; FRL-13044-01-R3]

Clean Air Act Title V Operating Permit Program Revision; District of Columbia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the District of Columbia (DC, the District)'s title V operating permits program, submitted on behalf of the District by the Department of Energy and Environment (DOEE). The revision updated title V operating permit fees collected by DOEE in order to ensure that the title V operating program will continue to be adequately funded. The revision also reorganized some sections in Chapter 3 with no substantive change in content. 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 No. EPA-R03-OAR-2025-1614 at www.regulations.gov, or via email to Supplee.Gwendolyn@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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, please contact the person identified in the **For Further Information Contact** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Yongtian He, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2339. Mr. He can also be reached via electronic mail at he.yongtian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The DC title V operating permit program is implemented through its “Operating Permits and Acid Rain Programs,” codified in 20 District of Columbia Municipal Regulations (DCMR) Chapter 3. The EPA initially granted full approval of the DC title V operating permit program effective on November 30, 2001. See 66 FR 52538 (October 16, 2001). However, in a notice of deficiency (NOD) published in the *Federal Register* on December 21, 2001 (66 FR 65947), the EPA notified the District of Columbia of EPA’s finding that the District’s provisions for providing public notification of permitting actions did not fully comply with the requirements of the CAA and its implementing regulations. On April 4, 2003, the District of Columbia submitted revisions to the public notification requirements of the operating permit program and adequately resolved the deficiency identified in the 2001 EPA NOD (December 21, 2001, 66 FR 65947). The EPA subsequently determined that the District of Columbia maintains final full approval of the Clean Air Act title V operating permit program. See 68 FR 18581 (April 16, 2003).

On May 30, 2024, DOEE submitted a revision to 20 DCMR Chapter 3 for approval into the state’s EPA-approved title V program. DOEE revised 20 DCMR Chapter 3 to update fees for 40 CFR part 70 operating permits (“major source” or title V permits). Additionally, the DOEE revision clarified and resolved errors in the existing regulations, including adding a

definition for the term “relevant emission units.” The revision also reorganized some sections in Chapter 3 with no substantive change in content.

DOEE’s updated fee collection schedule is designed to ensure sufficient funding for its title V program, in order to cover all reasonable costs required to implement and administer the DOEE Title V Operating Permit Program as required by 40 CFR 70.9(a) and (b). Title V program costs include those for activities such as reviewing and processing operating permits and preconstruction 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. Under 40 CFR 70.9(a), an approved state or local title V operating permits program must require that the owners or operators of 40 CFR 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. See 40 CFR 70.9(b).

Following the District of Columbia’s municipal rulemaking process, DC revised its State Operating Permits Program under title V of the Clean Air Act through a rulemaking titled *Air Quality Permit Fees and Synthetic Minor Permitting Program* (effective June 5, 2020, 67 DCR 006789-006825). Through this rulemaking, DOEE revised fees for 40 CFR part 70 operating permits – major sources or title V permits – in 20 DCMR Chapter 3. Additionally, Chapter 3 was revised to clarify and resolve errors in the existing regulations, including adding a definition for the term “relevant emission units.” The District requests the EPA approval of *Air Quality Permit Fees and Synthetic Minor Permitting Program* as a revision to the District of Columbia’s title V program, as required under 40 CFR 70.4(i). This submittal also satisfies one of the action items from DOEE’s FY2023 Clean Air Act Title V Program Evaluation, dated September 6, 2023, which required DOEE to submit this regulation as a title V program revision within 12

months of the report date.¹ The DC submission indicates that it is necessary to update its fee collection schedule, otherwise DOEE would not be able to fully fund its title V program.

II. Summary of Title V Program Revision and EPA Analysis

In its May 30, 2024 submittal, DC sought the EPA approval of its revisions to 20 DCMR Chapter 3 into its title V program. DC's revisions to 20 DCMR Chapter 3 revised fees (Section 305) for its title V operating permit program. The revision reorganized three sections in Chapter 3 with no substantive change in content, including section 300 on applicability, section 301 on permit applications, and section 303 on permit issuance, renewal, reopening, and revision. The revision also clarified and resolved errors in the existing regulations, including adding a definition for the term "relevant emission units." DOEE's initial submission also included revisions in 20 DCMR Chapter 2 sections 200, 202, and 210 to create a synthetic minor permitting program, and added new section 211 to establish general construction and operating permit fees. However, in a May 28, 2025 supplemental letter which is included in the docket for this action, DOEE clarified its request so that only the revisions in 20 DCMR Chapter 3 found in *Air Quality Permit Fees and Synthetic Minor Permitting Program* will be incorporated as a revision to the District of Columbia's title V program, as required under 40 CFR 70.4(i).²

In 20 DCMR Chapter 3 section 305, DOEE restructured 40 CFR part 70 sources permit application fee (section 305.1) and annual fees based on the total tons of actual emissions of each regulated pollutant (section 305.2, section 305.3). Section 305.5 requires that owners or operators of sources accepting federally enforceable emission limits pursuant to sections 200.6 and 300.3(c) shall pay a permit application fee (original and renewal applications) of five thousand dollars (\$5,000). Section 305.6 stipulates that DOEE use the Consumer Price Index for annual increases of fees charged under sections 305.2 and 305.3. Other subsections of section

¹ September 6, 2023, the US EPA Region 3 issued a Clean Air Act Title V Program Evaluation Report for District of Columbia Department of Energy and Environment – FY2023.

² On November 20, 2025, the EPA proposed approval of a revision to the DC SIP that included revisions to Chapter 2 which, among other things, created a synthetic minor program to which the relevant fees in this current action apply. See 90 FR 52305.

305 are related to when and where to pay and penalties for failure to pay on time. DOEE added a definition of “relevant emission units” in section 399 (Definitions and Abbreviations).

With this fee schedule change, DOEE indicates that it can ensure that fees will remain sufficient to cover the costs of administering the plan approval application and operating permit process as required by section 502(b) of the CAA. Without this fee update, DOEE’s title V program is vulnerable and may not be able to sustain its title V operating permit program in a manner that is consistent with Federal requirements. If funds were to become insufficient to sustain an adequate title V program in DC, the EPA may determine that DOEE 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). This determination could lead to the EPA withdrawing approval of the DC title V operating permit program. Were that to occur, the EPA would have the authority and obligation to implement a Federal title V operating permit program in DC 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. See 42 U.S.C. 7509(b).

The EPA reviewed DOEE’s submittal for consistency with the presumptive minimum fee rate outlined in the September 17, 2024, EPA Office of Air Quality Planning and Standards memorandum,³ as well as the requirements of 40 CFR 70.9(b)(2), and determined that DOEE met the requirements of CAA section 502. The EPA also determined the submittal is consistent with applicable EPA requirements in the title V operating permit program of the CAA and 40 CFR 70.9 for the collection of sufficient title V fees to cover permit program implementation and oversight costs. This rulemaking proposes to approve DC’s revision of its title V fees in order to ensure the fees collected are sufficient to fund DC’s title V program.

III. Proposed Action

³ Office of Air Quality Planning and Standards (OAQPS), https://www.epa.gov/system/files/documents/2024-09/fee70_2025.pdf.

Pursuant to 40 CFR 70.4(i)(2), the EPA is proposing to approve as a revision to the District of Columbia title V operating permit program. DOEE's May 30, 2024 submittal revised DC's title V fee structure in order to ensure sufficient fees are collected each year adequately and continually fund DC's title V program. The revisions meet the relevant requirements of section 502 of the CAA and 40 CFR 70.4 and 70.9. The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator approves title V operating permit program revisions that comply with the Act and applicable Federal Regulations. See 42 U.S.C. 7661a(d). Thus, in reviewing title V operating permit program submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 Orders 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- 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 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves

a state program;

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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 Clean Air Act.

In addition, the proposed rulemaking is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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.

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