

DATES: Comments on this proposed action must be received in writing by August 2, 1995.

ADDRESSES: Comments should be addressed to Wayne A. Kaiser at the address below. Copies of the Kansas submittal and other supporting information used in developing the proposed rule are available for inspection at the U.S. Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551-7603.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under Title V of the Clean Air Act (the Act") as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program, and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these programs to EPA by November 15, 1993, and 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 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 for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993, date, or by the end of an interim period, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of Submission by State Authority

1. Support Materials

The Governor of Kansas submitted an administratively and technically complete Title V Operating permit program on December 12, 1994. EPA deemed the program submittal complete in a letter to the governor on January 26, 1995. Comments noting deficiencies in

the Kansas program were sent to the state in a letter dated February 22, 1995. The state responded in letters dated April 7 and April 17, 1995.

The program submittal includes a legal opinion from the Attorney General of Kansas 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 intends to implement the program. The submittal additionally contains evidence of proper adoption of the program regulations, permit application forms, a data management system, and a permit fee demonstration.

2. Program Description

The Governor's letter states that the entire geography of Kansas will be covered by this program and that the state will not administer the program on any Indian lands. EPA will administer the Title V program on Indian lands in Kansas. The letter also states that the Kansas Department of Health and Environment (KDHE) will be the official permitting authority responsible for implementation of the program. Finally, the letter requests approval and delegation of authority to implement section 112(l) of the Act.

In addition to the state's class I Title V permit rules, the state is establishing a State Implementation Plan (SIP) based permit system for creating Federally enforceable limitations, called the class II permit. This permit mechanism will allow sources to avoid having to obtain a part 70 operating permit. Finally, the state is requiring all air emission sources not qualifying for a class I or class II permit to obtain a class III permit.

The state has been collecting emission fees for two years, which have been used for "ramp-up" activities, including the hiring of additional staff and funding of a Small Business Assistance Program. The state provided a resource demonstration, discussed later, to justify deviating from the presumptive minimum of \$25 per ton, Consumer Price Index (CPI) adjusted. The state is also authorized to collect fees for non-Title V program activities.

3. Regulations and Program Implementation

Except as noted below, the state submittal, including the core operating permit regulations (Kansas Administrative Regulations (K.A.R.) 28-19-500 through 518), meets the requirements of 40 CFR 70.2 and 70.3 with respect to applicability; 40 CFR 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; 40 CFR 70.5 with respect to

complete application forms and criteria which define insignificant activities; 40 CFR 70.7 with respect to public participation and minor permit modifications; and 40 CFR 70.11 with respect to requirements for enforcement authority.

Areas in which the Kansas program is deficient and corrective action is required prior to full approval are discussed below. Although failure to correct the program would require EPA to disapprove it, Kansas has indicated that it can make the required changes and submit them to EPA. Readers may refer to the Technical Support Document (TSD) accompanying this rulemaking for a detailed explanation of each comment and the corrective actions required of the state.

a. Rule revisions. K.A.R. 28-19-7, General provisions; definitions. The state definition of applicable requirement as presently written requires that an SIP or Federal Implementation Plan requirement must be part of the Kansas air quality regulations. The state has SIP requirements, such as source-specific permits, and local agency air regulations, which are applicable requirements but are not in the Kansas air quality regulations. The state has committed to revise K.A.R. 28-19-7(e)(1) to remove this restriction.

Secondly, the applicable requirement definition does not include construction permits issued pursuant to rules K.A.R. 28-19-300, and its predecessor, K.A.R. 28-19-14. The state has committed to add a paragraph (e)(2)(D) to the definition of applicable requirement to correct this omission. These revisions are necessary to meet EPA's definition of applicable requirement in 70.2.

K.A.R. 28-19-511. Class I operating permits; application contents. Paragraph (b) details information which must be included in a permit application. This paragraph must be revised in three areas. First, 511(b)(3) must be revised to clarify that fugitive emissions of regulated pollutants must be included in the permit application. Second, 511(b)(3)(A) must be revised to clarify that the state maintains a list of insignificant activities which does not need to be included on the application form. The state has decided to remove this list from the application forms but maintain it separately. The state must also submit its list of insignificant activities to EPA for approval. And third, 511(b)(16) must be revised to clarify that compliance plans apply to all sources. As written, the rule could be read to apply only to acid rain sources. These revisions are necessary to meet the requirements for applications for