

other relevant materials are available for inspection as part of the public docket (NV-DEP-95-1-OPS). The docket may be viewed during regular business hours at the address listed above.

#### 1. Title V Program Support Materials

NDEP's initial title V program was submitted on November 22, 1993. The submittal was found to be complete on January 13, 1994. In a letter dated July 20, 1994, NDEP submitted to EPA revised title V implementing regulations. The revised regulations constituted a material change to the State's title V program, and hence, extended EPA's review period pursuant to section 70.4(e)(2). On February 8, 1995, EPA received an amended title V submittal from NDEP ("amended submittal") and a letter from the Governor's designee requesting that the amended submittal be reviewed and acted on in lieu of the initial November 22, 1993 submittal. EPA agreed, sent a second program completeness letter to NDEP on February 27, 1995, and is taking action on the February 8, 1995 amended submittal in this notice.

NDEP's February 8, 1995 submission contains a complete program description, enabling legislation, State implementing and supporting regulations, and all other program documentation required by section 70.4. The amended submittal also contains a list of the changes made from the November 22, 1993 version, such as a revised fee demonstration and the removal of enacted bills that have since been codified into the Nevada Revised Statutes ("NRS"). The February 8, 1995 submittal does not, however, include an updated Attorney General's opinion; it includes the original version signed November 15, 1993. Consequently, the citations for several rules and legislation are expressed in a precodification format. EPA is therefore relying on elements of the initial submittal as supporting documentation for this rulemaking. The TSD, located in the docket, specifically identifies when EPA's evaluation of the program relies on supporting documentation contained in the initial program submittal.

#### 2. Title V Operating Permit Regulations and Program Implementation

NDEP relied on additions and amendments to its existing air quality regulations (NAC 445.430-445.846) to satisfy the requirements of part 70 and title V. The first "title V" revisions to NAC 445.430-846 were adopted on November 3, 1993. On March 3, 1994, the Nevada State Environmental Commission made additional changes to the title V portions of NAC 445.430-

846. The February 8, 1995 amended submittal contains the March 3, 1994 version of NAC 445.430-445.846; a May 26, 1994 amendment to NAC 445.7135 (fees); a February 16, 1995 amendment to NAC 445B.221 (part 72, acid rain); and a February 16, 1995 amendment to NAC 445B.327 (fees).<sup>1</sup> In a letter sent to EPA dated July 12, 1995, NDEP identified the provisions in NAC 445.430-846 relevant to title V implementation and requested that EPA take action only on those provisions identified. Therefore, in this proposed interim approval notice, EPA is acting on the following provisions of Nevada State law: NAC 445.430, 445.432, 445.433, 445.4343, 445.4346, 445.438, 445.4395, 445.4415, 445.4425, 445.4615, 445.4625, 445.4635, 445.4645, 445.477, 445.4915, 445.4955, 445.500, 445.5008, 445.504, 445.506, 445.5095, 445.5105, 445.521, 445.5275, 445.5305, 445.5405, 445.5431, 445.548, 445.550, 445.559, 445.5695, 445.571, 445.5855, 445.5905, 445.5915, 445.5925, 445.5935, 445.613, 445.628, 445.630, 445.649, 445.662, 445.664, 445.696, 445.697, 445.699, 445.704, 445.7042, 445.7044, 445.705, 445.7052, 445.7054, 445.7056, 445.7058, 445.706, 445.707, 445.7073, 445.7075, 445.7077, 445.7112, 445.7114, 445.7122, 445.7124, 445.7126, 445.7128, 445.713, 445.7131, 445.7133, 445.7135, 445.7145, 445.7155, 445.717, 445.7191, 445.7193, 445.7195, 445B.221, 445B.327. Provisions not included in the July 12, 1995 letter from NDEP may still be considered supporting documentation for the State's title V operating permit program.

NDEP's title V implementing regulations substantially meet the requirements of 40 CFR part 70, sections 70.2 and 70.3 for applicability; sections 70.4, 70.5, and 70.6 for permit content, including operational flexibility; section 70.7 for public participation and minor permit modifications; section 70.5 for criteria that define insignificant activities; section 70.5 for complete application forms; and section 70.11 for enforcement authority. Although the regulations substantially meet part 70 requirements, there are several deficiencies in the program that are outlined under section II.B.1. below as interim approval issues and further described in the TSD.

##### a. Applicability

NDEP stated in its amended submittal that it will take advantage of EPA's March 8, 1994 policy regarding fugitive

emissions. NDEP will not require fugitives to be considered in determining the major source status of sources subject to post-1980 New Source Performance Standards ("NSPS") and National Emissions Standards for Hazardous Air Pollutants ("NESHAP"). In accordance with that policy, NDEP's title V program is eligible only for interim approval. (See March 8, 1994 memorandum entitled, "Consideration of Fugitive Emissions in Major Source Determinations," signed by Lydia Wegman.)

The program description, submitted as part of NDEP's title V program, indicates the State's intention to permit only major sources, phase II acid rain sources, and solid waste incinerators subject to section 129(e) of the Act (program submittal, Section VI, pp.2-4). The program description further states that NDEP's title V program does not cover nonmajor sources ("area sources") subject to a section 111 or 112 standard or in a category designated by the Administrator. While the coverage is not consistent with section 70.3(b)(2), which states that section 111 and 112 standards promulgated after July 21, 1992 will specify whether a nonmajor source must obtain a title V permit, it is acceptable for the following two reasons: 1) EPA is deferring title V permit requirements for nonmajor sources subject to recently promulgated MACT standards (See May 16, 1995 guidance document entitled, "Title V Permitting for Nonmajor Sources in Recent Section 112 Maximum Achievable Control Technology (MACT) Standards," by John Seitz, Director of the Office of Air Quality Planning and Standards); and 2) NDEP committed to expeditiously revise its title V program to reflect any action by EPA to require title V permitting for nonmajor sources (program submittal, section VI, pp.3-4).

Although NDEP's program description clearly indicates NDEP's intent to exclude nonmajor sources from its title V (i.e., Class I) permitting requirements, NDEP's regulations require any new source subject to a section 111 or section 112 standard or any new source in a category of sources designated by the Administrator of EPA to apply for a Class I-B permit (NAC 445.7044.3 and .4). In other words, by omitting the word "major" when specifying new source applicability, the regulations could be interpreted to require certain nonmajor sources to obtain title V permits. EPA views this applicability distinction as an inconsistency in the State's program. Prior to final rulemaking, EPA requests that NDEP provide a letter to resolve this apparent inconsistency and

<sup>1</sup> The citation format varies because NDEP revised its citation system after most of the implementing regulations were adopted and submitted to EPA. A citation translation key can be found in the docket at EPA Region IX.