

IEU excluded, perhaps unintentionally, IEUs from certain permit application requirements that apply to IEUs and possibly from even title V applicability determinations.

During the public comment period on the September 1995 proposal, EPA received comments from the Petitioners, the State of Washington, Department of Ecology ("State" or "Ecology"), and the Boeing Corporation, an aerospace manufacturing concern with major operations in Washington State (collectively, the "commenters"). The commenters addressed only EPA's proposed interim approval of the Washington IEU program. No comments were received regarding the change in jurisdiction of Benton County Clean Air Authority or the correction of the expiration date for interim approval.

EPA has carefully reviewed the comments and continues to believe that the Washington IEU program must be revised as a condition of full approval. As discussed in more detail below, EPA grants deference to the State's interpretation of its IEU regulations, and is therefore satisfied, based on the State's interpretation, that the State's IEU regulations meet the requirements of part 70 with respect to permit applications and title V applicability. The problems with the permit content requirements of section 70.6 which EPA addressed in the September 1995 proposal, however, arise not from a difference of opinion as to the interpretation of Washington's regulations, but instead from a difference of opinion as to the plain meaning and intent of the part 70 regulations themselves. EPA continues to believe that part 70 does not exempt IEUs subject to applicable requirements from the testing, monitoring, recordkeeping, reporting, compliance, and compliance certification requirements of 40 CFR 70.6(a)(1), (a)(3) and (c). Because Washington's title V program expressly excludes IEUs subject to generally applicable requirements from these requirements of section 70.6, EPA continues to believe that the Washington IEU regulations do not qualify for full approval.

II. Final Action and Implications

A. Response to Comments

As discussed above, the comments addressed only EPA's proposed interim approval of Washington's IEU regulations.

1. Permit Content

As the State of Washington and Petitioners concede, the Washington program expressly exempts IEUs subject

to generally applicable requirements from the testing, monitoring, recordkeeping, reporting, compliance, and compliance certification requirements of section 70.6.² See WAC 173-401-200(16), 173-401-530(2)(c) and 173-401-530(2)(d). Instead, for IEUs subject to generally applicable requirements of the Washington SIP, the Washington program requires only that the permit contain the generally applicable requirements that apply to such IEUs. WAC 173-401-530(2)(b). The commenters argue that the language and intent of the part 70 regulations allow such an exemption from the permit content requirements of section 70.6 for IEUs. EPA disagrees.

The commenters acknowledge that there is no reference in 40 CFR 70.6 to IEUs. They argue, however, that this fact "in no way undermines the authority granted to states in section 70.5 to exempt insignificant emission units from permit program requirements." Section 70.5, however, does not exempt IEUs from "permit program requirements" in general, but instead exempts IEUs only from certain permit application requirements. There is *nothing* in the language of section 70.5 or elsewhere in the part 70 regulations to support the commenters' argument that, because a State may exempt IEUs from certain permit application requirements in section 70.5, a State may also exempt IEUs from certain permit content requirements in section 70.6.

The commenters' reliance on EPA's inherent power to exempt emission units with *de minimis* emissions from certain permit content requirements is also misplaced. EPA did indeed rely on *Alabama Power Co. v. Costle*, 636 F.2d 323 (D.C. Cir. 1980), to exempt IEUs from certain permit application requirements in section 70.5. See 57 FR 32250, 32273 (July 21, 1992). Whether EPA could have relied on this same authority to exempt IEUs from certain permit content requirements in section 70.6, however, is irrelevant at this point. As stated above, nothing in the language of the part 70 regulations themselves or in the preamble to the proposed or final part 70 regulations supports the commenters' argument that the limited

exemption in certain permit application requirements in section 70.5 also extends to the permit content requirements of section 70.6. The commenters' concern appears to be with the part 70 regulations themselves, that is, the failure of the part 70 regulations to exempt IEUs subject to applicable requirements from certain permit content requirements of section 70.6. The time for raising such an issue has long since past.

Unable to point to any language in the part 70 regulations supporting their interpretation, the commenters rely on "logic." The commenters first argue that "it is entirely illogical for EPA to specifically exempt these IEUs from the application and then attempt to regulate these same IEUs in the final permit." The commenters go on to state that EPA's decision undermines the broad purpose of part 70's IEU program exemption. The commenters appear to misunderstand the purpose and scope of the part 70 program for insignificant emissions units and activities. In promulgating section 70.5(c), EPA crafted a limited exemption regarding the *information* required in part 70 permit applications. Notwithstanding this general exemption from certain permit application requirements, section 70.5(c) requires that an application "may not omit information needed to determine the applicability of, or to impose, any applicable requirement." This means that when information is needed in an application to determine whether substantive requirements apply to an IEU, even this limited exemption to the permit application requirements provided in section 70.5 falls away.

In a similar vein is the comment that not allowing IEUs to be exempted from permit content requirements "essentially obliterates the exemption." EPA disagrees. An emission unit that is not exempted from the application must be addressed in accordance with section 70.5(c)(3), which among other things requires a physical description of the emissions points, information about the emissions, raw materials and production rate, and any air pollution control equipment. EPA therefore sees no basis for the argument that extension of the IEU exemption to the permit content requirements of section 70.6 is necessary in order to give meaning to the IEU exemption.

The commenters also argue that "If insignificant emission units are not entirely exempted from the monitoring, recordkeeping, reporting and certification requirements of a permit, both sources and permitting agencies will be forced to expend substantial

²This includes the requirement to include "gapfilling" testing, monitoring, recordkeeping and reporting requirements for IEUs, as required by 40 CFR 70.6(a)(3)(i), (ii) and (iii); compliance certification, testing, monitoring, reporting and recordkeeping requirements sufficient to assure compliance with the generally applicable requirements for subject IEUs, as required by 40 CFR 70.6(c)(1); compliance certification for IEUs, as required by 40 CFR 70.6(c)(5); and, for IEUs not in compliance, a compliance schedule and progress reports, as required by 40 CFR 70.6(c)(3) and (4).