

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

l. *Description of the Project:* The proposed peaking project consists of the following existing facilities: (1) A 2,000-foot-long dam, consisting of (a) a 270-foot-long, 175-foot-high concrete section, (b) a 200-foot-long attached powerhouse section, and (c) an earthen section in excess of 1,500 feet in length; (2) four steel penstocks ranging from 6 feet to 24 feet in diameter; (3) a concrete powerhouse containing four generating units, having a total rated hydraulic capacity of 7,140 cubic feet per second and installed generation capacity of 76.4 megawatts (4) a 3,746-acre impoundment varying in width from 0.9 to 1.5 miles, extending about 9 miles upstream, that has a usable storage capacity of 850 million cubic feet; and (5) appurtenant facilities. The applicant estimates the total average annual generation would be approximately 202 million kilowatt hours.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link—select "Docket #" and follow the instructions (call 202-208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms, conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS",

"RECOMMENDATIONS", "TERMS AND CONDITIONS", or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms, conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98-1-000]

Regulations Governing Off-the-Record Communications; Public Notice

December 21, 2001.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record

communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance).

Exempt

1. Project No. 11495-000: 12-10-01, Kenneth D. Thomas
2. Project Nos. 2699-001 and 2019-017: 12-10-01, Carol Gleichman
3. Project No. 11563-002: 12-10-01, Carol Gleichman
4. RP00-241-000: 12-11-01, Office of Clerk/U.S. House of Representatives
5. CP01-415-000: 12-13-01 Medha Kochlar
6. CP01-176-000 and CP01-179-000: 12-13-01, Ray Hellwig
7. P-2342-011: 12-13-01, Loree Randall
8. CP01-76-000, CP01-77-000, RP01-217-000, and CP01-156-000: 12-18-01, Chris Zerby

Linwood A. Watson, Jr.,

Acting Secretary.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-7123-7]

Notice of Deficiency for Clean Air Operating Permits Program in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to its authority under section 502(i) of the Clean Air Act and the implementing regulations at 40 CFR 70.10(b)(1), EPA is publishing this notice of deficiency for the State of Washington's (Washington or State) Clean Air Act title V operating permits program, which is administered by two State agencies and seven local air pollution control authorities. The notice of deficiency is based upon EPA's finding that Washington's provisions for insignificant emissions units do not meet minimum Federal requirements for program approval. Publication of this notice is a prerequisite for withdrawal of Washington's title V program approval, but does not effect such withdrawal.

EFFECTIVE DATE: December 14, 2001. Because this Notice of Deficiency is an adjudication and not a final rule, the Administrative Procedure Act's 30-day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT: Denise Baker, EPA, Region 10, Office of Air Quality (OAQ-107), 1200 6th Avenue, Seattle, WA 98101, (206) 553-8087.

I. Description of Action

EPA is publishing a notice of deficiency for the Clean Air Act (CAA or Act) title V operating permits program for the State of Washington. This document is being published to satisfy 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a title V permitting authority is not adequately administering or enforcing its title V operating permits program. The deficiency that is the subject of this notice relates to Washington's requirements for insignificant emissions units (IEUs) and applies to all State and local permitting authorities that implement Washington's title V program.

A. Approval of Washington's Title V Program

The CAA requires all State and local permitting authorities to develop operating permits programs that meet the requirements of title V of the Act, 42 U.S.C. 7661-7661f, and its implementing regulations, 40 CFR part 70. Washington's operating permits program was submitted in response to this directive. EPA granted interim approval to Washington's air operating permits program on November 9, 1994 (59 FR 55813). EPA repromulgated final interim approval of Washington's operating permits program on one issue,

along with a notice of correction, on December 8, 1995 (60 FR 62992).

Washington's title V operating permits program is implemented by the Washington Department of Ecology (Ecology), the Washington Energy Facility Site Evaluation Commission (EFSEC), and seven local air pollution control authorities: the Benton County Clean Air Authority (BCCAA); the Northwest Air Pollution Authority (NWAPA); the Olympic Air Pollution Control Authority (OAPCA); the Puget Sound Clean Air Agency (PSCAA); the Spokane County Air Pollution Control Authority (SCAPCA); the Southwest Clean Air Agency (SWCAA); and the Yakima Regional Clean Air Authority (YRCAA). After these State and local agencies revised their operating permits programs to address the conditions of the interim approval, EPA promulgated final full approval of Washington's title V operating permits program on August 13, 2001 (66 FR 42439).

B. Additional Public Comment Process on Title V Programs

On December 11, 2000 (65 FR 77376), EPA published a **Federal Register** notice notifying the public of the opportunity to submit comments identifying any programmatic or implementation deficiencies in State title V programs that had received interim or full approval. Pursuant to the settlement agreement discussed in that notice, EPA committed to respond to the merits of any such claims of deficiency on or before December 1, 2001, for those States, such as Washington, that had received interim approval. On March 12, 2001, EPA received comments from Smith & Lowney, PLLC, on behalf of Pacific Air Improvement Resource, Waste Action Project, Washington Toxics Coalition, and the Washington Environmental Council (the commenters). The commenters identified numerous alleged deficiencies in the title V operating permits programs administered by all Washington permitting authorities.

After thoroughly reviewing all issues raised by the commenters, EPA identified one area where EPA believes that Washington's regulations do not meet the requirements of title V and part 70—Washington's exemption of "insignificant emission units" from certain permit content requirements. Accordingly, EPA is issuing this notice of deficiency. In a separate document, EPA has responded to the other issues raised by the commenters, which EPA does not believe constitute deficiencies in Washington's operating permits program at this time.

C. Exemption of IEUs From Permit Content Requirements

Part 70 authorizes EPA to approve as part of a State program a list of insignificant activities and emission levels (IEUs) which need not be included in the permit application, provided that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the EPA-approved schedule. *See* 40 CFR 70.5(c). Nothing in part 70, however, authorizes a State to exempt IEUs from the testing, monitoring, recordkeeping, reporting, or compliance certification requirements of 40 CFR 70.6.

Washington's regulations contain criteria for identifying IEUs. *See* WAC 173-401-200(16), -530, -532, and -533. Sources that are subject to a Federally-enforceable requirement other than a requirement of the State Implementation Plan that applies generally to all sources in Washington (a so-called "generally applicable requirement") are not deemed "insignificant" under Washington's program even if they otherwise qualify under one of the five lists. *See* WAC 173-401-530(2)(a). Washington's regulations also expressly state that no permit application can omit information necessary to determine the applicability of, or to impose any applicable requirement. *See* WAC 173-401-510(1). In addition, WAC 173-401-530(1) and (2)(b) provide that designation of an emission unit as an IEU does not exempt the unit from any applicable requirements and that the permit must contain all applicable requirements that apply to IEUs. The Washington program, however, specifically exempts IEUs from testing, monitoring, recordkeeping, and reporting requirements except where such requirements are specifically imposed in the applicable requirement itself. *See* WAC 173-401-530(2)(c). The Washington program also exempts IEUs from compliance certification requirements. *See* WAC 173-401-530(2)(d).

Because EPA does not believe that part 70 exempts IEUs from the testing, monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6, EPA initially determined that Ecology must revise its IEU regulations as a condition of full approval. *See* 60 FR at 62993-62997 (final interim approval of Washington's operating permits program based on exemption of IEUs from certain permit content requirements); 60 FR 50166 (September 28, 1995) (proposed interim approval of

Washington's operating permits program on same basis). The Western States Petroleum Association (WSPA), together with several other companies and the Washington Department of Ecology, challenged EPA's determination that Ecology must revise its IEU regulations as a condition of full approval. See 66 FR at 19. On June 17, 1996, the Ninth Circuit found in favor of the petitioners. *WSPA v. EPA*, 87 F.3d 280 (9th Cir. 1996). The Ninth Circuit did not opine on whether EPA's position was consistent with part 70. It did, however, find that EPA had acted inconsistently in its title V approvals, and had failed to explain the departure from precedent that the Court perceived in the Washington interim approval. The Court then remanded the matter to EPA, instructing EPA to give full approval to Washington's IEU regulations.

In light of the Court's order in the WSPA case, EPA determined that it must give full approval to Washington's IEU regulations. Therefore, on August 13, 2001, EPA published a **Federal Register** notice granting final full approval to Washington's title V program notwithstanding what EPA believed to be a deficiency in its IEU regulations. 66 FR 42439–42440 (August 13, 2001). Nonetheless, as EPA stated in its final full approval of Washington's program, EPA maintained its position that part 70 does not allow the exemption of IEUs subject to generally applicable requirements from the testing, monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6 and intended to issue a notice of deficiency in another rulemaking action if the deficiencies in Washington's IEU regulations were not promptly addressed.

Since issuance of the Court's order in WSPA case, EPA has carefully reviewed the IEU provisions of those eight title V programs identified by the Court as inconsistent with EPA's decision on Washington's regulations. EPA has determined that three of the title V programs identified by the WSPA Court (Massachusetts; North Dakota; Knox County, Tennessee) are in fact consistent with EPA's position that insignificant sources subject to applicable requirements may not be exempt from permit content requirements. See 61 FR 39338 (July 29, 1996). North Carolina, Florida, and Jefferson County, Kentucky have made revisions to their IEU provisions. EPA has approved the changes made by North Carolina and Florida. 65 FR 38744, 38745 (June 22, 2000) (Forsyth County, North Carolina); 66 FR 45941

(August 31, 2001) (all other North Carolina permitting authorities); 66 FR 49837 (October 1, 2001) (Florida). EPA has not yet taken action on the changes made by Jefferson County, Kentucky. EPA has notified Ohio and Hawaii that their provisions for IEUs do not conform to the requirements of part 70 and must be revised. If Ohio and Hawaii do not revise their provisions for IEUs to conform to part 70, EPA intends to issue notices of deficiencies to these permitting authorities in accordance with the time frames set forth in the December 11, 2000 **Federal Register** notice soliciting comments on title V program deficiencies. See 65 FR 77376. Having addressed the inconsistencies identified by the Ninth Circuit when it ordered EPA to approve Washington's IEU provisions, EPA is now notifying Washington that it must bring its IEU provisions into alignment with the requirements of part 70 and other State and local title V programs or face withdrawal of its title V operating permits program.

Because WAC 173–401–530(2)(c) and (d), the regulations that exempt IEUs from certain permit content requirements, apply throughout the State of Washington, this notice of deficiency applies to all State and local agencies that implement Washington's operating permits program. As discussed above, those agencies include Ecology, EFSEC, BCCAA, NWAPA, OAPCA, PSCAA, SCAPCA, SWACAA, and YRCAA.

D. Effect of Notice of Deficiency

Part 70 provides that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(c)(1). This section goes on to list a number of potential bases for program withdrawal, including the case where the permitting authority's legal authority no longer meets the requirements of part 70. 40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the document be published in the **Federal Register**. Today's document satisfies this requirement and constitutes a finding of program deficiency. If the permitting authority has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after publication of a notice of deficiency, EPA may withdraw the State program, apply any of the sanctions

specified in section 179(b) of the Act, or promulgate, administer, and enforce a Federal title V program. 40 CFR 70.10(b)(2). Section 70.10(b)(3) provides that if a State has not corrected the deficiency within 18 months of the finding of deficiency, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. Upon EPA action, the sanctions will go into effect unless the State has corrected the deficiencies identified in this document within 18 months after signature of this document.¹ In addition, section 70.10(b)(4) provides that, if the State has not corrected the deficiency within 18 months after the date of notice of deficiency, EPA must promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

This document is not a proposal to withdraw Washington's title V program. Consistent with 40 CFR 70.10(b)(2), EPA will wait at least 90 days, at which point it will determine whether Washington has taken significant action to correct the deficiency.

II. Administrative Requirements

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of today's action may be filed in the United States Court of Appeals for the appropriate circuit within 60 days of January 2, 2002.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 14, 2001.

L. John Iani,

Regional Administrator, Region 10.

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–00439M; FRL–6818–1]

Pesticide Program Dialogue Committee; Committee and Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

¹ EPA is developing an Order of Sanctions rule to determine which sanction applies at the end of this 18 month period.