

Drafting Information

The principal author of these regulations is Lisa S. Dobson of the Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.368-1 is amended by:

1. Revising paragraph (e)(2).
2. Revising and redesignating the text of paragraph (e)(8) as paragraph (e)(8)(i).
3. Adding paragraph (e)(8)(ii).

The revisions and addition read as follows:

§ 1.368-1 Purpose and scope of exception of reorganization exchanges.

[The text of the proposed amendment to § 1.368-1(e)(2) and (e)(8) is the same as the text of § 1.368-1T(e)(2) and (e)(8) published elsewhere in this issue of the **Federal Register**].

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 70**

[Docket No. EPA-R02-OAR-2006-0963; FRL-8289-4]

Clean Air Act Title V Operating Permit Program Revision; New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the New Jersey title V Operating Permit Program submitted by the New Jersey Department of Environmental Protection (NJDEP) on October 4, 2006. The New Jersey Operating Permit Program is

implemented through its Operating Permits Rule, codified at Subchapter 22 of Chapter 27 of Title 7 of the New Jersey Administrative Code. The October 4, 2006 revision changes the title V fee program that funds the New Jersey Operating Permit Program, and various sections of the Operating Permits Rule relating to definitions, general provisions, general application procedures, operating permit application contents and completeness review. These changes resulted in both substantial and nonsubstantial revisions to New Jersey's Operating Permit Program. EPA is proposing to approve these revisions. The intended affect of this action is to improve the State's Operating Permit Program.

DATES: Comments must be received on or before April 19, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R02-OAR-2006-0963, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Werner.Raymond@epa.gov
- *Fax:* 212-637-3901.
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R02-OAR-2006-0963. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going

through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

FOR FURTHER INFORMATION CONTACT:

Suilin Chan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4019.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

I. Background

The Clean Air Act (the Act) Amendments of 1990 required all states to develop Operating Permit Programs pursuant to title V of the Act, 42 U.S.C. 7661-7661f, and the regulations promulgated under title V, which are found at 40 CFR part 70. EPA granted interim approval (effective June 17, 1996) of the Operating Permit Program submitted by New Jersey in response to this directive. 61 FR 24715 (May 16, 1996); 40 CFR part 70, Appendix A. Effective November 30, 2001, EPA granted full approval to New Jersey's title V Operating Permit Program. 66 FR 63168 (December 5, 2001).

The current revision to the Operating Permits Rule adjusts the title V fee schedules to conform with the Omnibus Legislation adopted by the New Jersey state legislature in 2002, and ensures that requisite funding needs of the New Jersey Operating Permit Program are met. The revised Operating Permits Rule also includes changes that improve New Jersey's Operating Permit Program. New Jersey submitted its program revision request to the EPA on October 4, 2006. The revision request describes the specific changes made to New Jersey's Operating Permits Rule.

II. What Is Being Addressed in This Action?

In today's action, EPA is proposing to approve revisions to N.J.A.C. 7:27-22, as identified below, which NJDEP adopted

on June 9, 2006, and submitted to EPA for approval on October 4, 2006.

A. Definitions

NJDEP revised N.J.A.C. 7:27–22.1 to delete definitions that have become unnecessary because of the changes made to the Operating Permits Rule. The terms “Category I” and “Category II” are deleted because they are no longer used by NJDEP in determining title V fees for significant permit modifications under the new fee schedules. Significant modifications used to be classified as “Category I” (for which lesser fees were charged), or “Category II” (for which higher fees were charged). The differences in fees were based on the assumption that Category I source types are either not required to meet, or have already met, “state of the art” emission control requirements thereby obviating the need for review in this regard. However, the revised rule eliminates this presumption. All applications for significant permit modifications will be screened first to determine what level of review is needed, which in turn determines the amount of fees required pursuant to the revised fee schedules found at N.J.A.C. 7:27–22.31(r) and (s).

A definition for “probe” has been added to the definitions section to aid in assessing the appropriate fees for stack test protocol reviews. The amount of fees charged is based on the number of probes used in the stack test.

Definitions for “registration,” “registration form,” and “registrant,” are also added to the definitions section because these terms are used in the new application procedures established under N.J.A.C. 7:27–22.14. Facilities may apply for a general operating permit by submitting the appropriate registration form.

DEP also added to the definitions section the terms “on-specification used oil,” “space heater,” and “used oil” as they were defined in N.J.A.C. 7:27–20.1 (Used Oil Combustion Rule). These terms were not previously defined in N.J.A.C. 7:27–22 and are now added to maintain consistency between N.J.A.C. 7:27–20 and N.J.A.C. 7:27–22.

B. General Provisions

DEP amended N.J.A.C. 7:27–22.3(rr) to clarify the application procedures pertaining to environmental improvement pilot tests. Previously, the rule stated that environmental improvement pilot test approvals may be renewed by application but did not provide more details on the renewal process. The revised rule clarifies that a new application for preconstruction approval must be submitted if an

environmental improvement pilot test needs to be extended for up to an additional 90 days after the expiration of the initially approved 90-day period.

C. General Application Procedures

NJDEP revised N.J.A.C. 7:27–22.4 to establish milestones for phasing out paper application submissions, and phasing in electronic submission of all applications, except for renewals. Electronic submission includes a non-Internet-based electronic system known as RADIUS, or an internet-based system known as e-NJEMS. The revisions in this section of the rule provide incentives, such as lower fees, to encourage electronic filing.

D. Operating Permit Application Contents

NJDEP amended N.J.A.C. 7:27–22.6(a) to eliminate the requirement that application fees be submitted with an application in order for it to be deemed administratively complete. Fees are no longer required to accompany an application. Instead, NJDEP will determine the appropriate fees upon receipt of an application in accordance with the new fee schedules found at N.J.A.C. 7:27–22.31(r) and (s). The fee information is forwarded to the Department of Treasury for billing and collection.

E. Completeness Review

NJDEP amended N.J.A.C. 7:27–22.10(f) by replacing the word “the” before “fee requirement” with the word “any.” Under the revised rule, certain applications require no fees. The word “any” is intended to indicate that there may or may not be a fee required for an application.

F. Title V Fees

NJDEP revised N.J.A.C. 7:27–22.31(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (p), (r), (s), (t) and (u) to establish or revise the Base and Supplementary Fee Schedules for various title V permitting activities in order to conform with the Omnibus Fee Legislation of 2002, and to assure adequate funding for New Jersey’s title V Operating Permit Program. NJDEP deleted all provisions that applied to past fiscal years and added new provisions in accordance with the new fee schedules. A summary of the changes made to N.J.A.C. 7:27–22.31 follows.

Previously, NJDEP charged fees for processing minor and significant permit modifications based on the number of significant source operations being modified for fiscal years prior to 1998. The revised rule requires no fee for minor modifications but increases fees

for significant modifications and applications for environmental improvement pilot tests. Also, new fees are added for operating permit renewal applications and registration under a general operating permit for used-oil space heaters.

NJDEP also revised the rule to clarify that the emissions-based fees must be submitted by subject facilities every year. The annual emissions-based fee rate was increased from \$25 to \$60 per ton of regulated pollutant in 1989 dollars, adjusted by the Consumer Price Index (CPI) as required by the 2002 Omnibus Legislation. Provisions have been included in the revised rule to keep the existing annual emission fee rate unchanged should the CPI drop to a negative value in any given year. The minimum annual emissions-based fees have been increased from \$1,000 to \$3,000 per facility. The annual emissions fee exemption for carbon monoxide (CO) was deleted in the revised rule because it was valid from 1998 through 2002 only. CO emissions are no longer exempted from fee calculations from FY 2003 forward. However, the revised rule does exempt carbon dioxide emissions from fees as an incentive to encourage dry cleaners to replace dry cleaning equipment that uses perchloroethylene, a known carcinogen, with equipment that uses the non-harmful liquid carbon dioxide as its sole dry cleaning agent.

The fee collection process has been changed to implement New Jersey’s “uniform process.” Previously, facilities were required to submit all required fees with or before the applications for initial permits, and with applications for modifications. The revised rule no longer requires the requisite fees to be determined by the applicants and submitted with the applications. Under the revised rule, fees are determined by NJDEP’s Bureau of Operating Permits upon receipt of applications for initial permits, significant modifications, or renewals. The New Jersey Treasury Department bills and collects the fees. The bases used in calculating the fees for each application are stipulated in N.J.A.C. 7:27–22.31. To better track who has paid the required fees, the option to pay by money order is eliminated.

G. Appendix

DEP corrected a typographical error found in *Table B* of the Appendix of the New Jersey Operating Permits Rule which incorrectly listed “2-Methoxyethanol” with CAS number 108864. The correct CAS number for “2-Methoxyethanol” is 109864.

III. What Is Our Proposed Action?

EPA is proposing to approve revisions to New Jersey's regulations as described above. The State of New Jersey has adopted the above rule revisions in accordance with state rulemaking procedures. EPA is therefore proposing to approve the revisions to New Jersey's Operating Permits Rule, codified at N.J.A.C. 7:27-22, as a revision to New Jersey's Operating Permit Program.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and

responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State Operating Permit Programs submitted pursuant to title V of the Clean Air Act, EPA will approve such regulations provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove such regulations for failure to use VCS. It would, thus, be inconsistent with applicable law for EPA, when it reviews such regulations, to use VCS in place of a State regulation that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 6, 2007.

Alan J. Steinberg,

Regional Administrator, Region 2.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AU74

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Hine's Emerald Dragonfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; reopening of comment period and notice of availability of draft economic analysis, and amended Required Determinations.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period and the availability of the draft economic analysis for the proposed designation of critical habitat for the endangered Hine's emerald dragonfly (*Somatochlora hineana*) under the Endangered Species Act of 1973, as amended (Act). We are also revising our proposed rule, published on July 26, 2006 (71 FR 42442), to include an additional proposed critical habitat unit in Door County, Wisconsin, and amending the Required Determinations for the proposal. The draft economic analysis forecasts that costs associated with conservation activities for the Hine's emerald dragonfly would range from \$16.8 million to \$46.7 million in undiscounted dollars over the next 20 years. In discounted terms, potential economic costs are estimated to be \$13.3 to \$34.5 million (using a 3 percent discount rate) and \$10.5 to \$25.2 million (using a 7 percent discount rate). In annualized terms, potential costs are expected to range from \$0.8 to \$2.3 million annually (annualized at 3 percent) and \$0.9 to \$2.4 million annually (annualized at 7 percent). We are reopening the public comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, our revision to the proposed rule, the associated draft economic analysis, and the amended Required Determinations. Comments previously submitted need not be resubmitted as they will be incorporated into the public record and fully considered in preparation of the final rule.

DATES: We will accept public comments until April 3, 2007.

ADDRESSES: If you wish to comment, you may submit your comments and information concerning this proposal, identified by "Attn: Hine's Emerald Dragonfly Critical Habitat," by any one of several methods:

(1) Mail or hand-deliver to: John Rogner, Field Supervisor, U.S. Fish and Wildlife Service, Chicago Illinois Ecological Services Field Office, 1250 S. Grove, Suite 103, Barrington, IL 60010.

(2) Send by electronic mail (e-mail) to hedch@fws.gov. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

(3) Fax your comments to: (847) 381-2285.

(4) Submit comments via the Federal eRulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.