

II. Background

A. Approval of Ohio's Title V Program

The Clean Air Act (CAA or Act) 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 (Part 70). Ohio submitted its operating permits program in response to this directive. EPA granted full approval to Ohio's Title V operating permits program on August 15, 1995 (60 FR 42045).

Ohio's Title V operating permits program is implemented by the Ohio Environmental Protection Agency (OEPA) and local air pollution control agencies.

B. Notice of Deficiency

Under section 502(i) of the Act and 40 CFR 70.10(b)(1), whenever the EPA Administrator makes a determination that a Title V permitting authority is not adequately administering and enforcing a program, or a portion thereof, in accordance with Title V's requirements, the Administrator shall notify the State by publishing a notice in the **Federal Register**. If the permitting authority has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after issuance of a notice of deficiency, EPA may withdraw approval of the State program or a portion thereof, apply any of the sanctions specified in section 179(b) of the Act (*i.e.*, loss of federal highway funds or application of strict emissions offset requirements for new sources in certain areas), or promulgate, administer, and enforce a Federal Title V program. 40 CFR 70.10(b)(2). If a State has not corrected the deficiency within 18 months of the notice of deficiency, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. CAA 502(i)(2), 42 U.S.C. 7661a(i)(2); 40 CFR 70.10(b)(3). In addition, if the State has not corrected the deficiency within 18 months, EPA must promulgate, administer, and enforce a whole or partial federal Title V program within 2 years after the date of the finding of deficiency. CAA 502(i)(4), 42 U.S.C. 7661a(i)(4); 40 CFR 70.10(b)(4).

Pursuant to section 502(i) of the Act and 40 CFR 70.10(b)(1), EPA notified Ohio of EPA's finding that Ohio's regulations for IEUs and Ohio's regulations requiring reports of any required monitoring at least every six months and prompt reports of deviations do not meet minimum Federal requirements in a Notice of

Deficiency published in the **Federal Register** on April 18, 2002 (67 FR 19175).

C. Exemption of IEUs From Permit Content Requirements

1. Background

Part 70 authorizes EPA to approve as part of a State program a list of 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 permit content requirements of 40 CFR 70.6.

Ohio's regulations contain criteria for identifying IEUs. *See* OAC 3745–77–01(U). Ohio's regulations require that permit applications contain information necessary to determine the applicability of, or to impose, any applicable requirement. *See* OAC 3745–77–03(A). The Ohio program, however, specifically exempts from the federally enforceable section of its Title V permits federally enforceable applicable requirements to which IEUs are subject. *See* OAC 3745–77–02(E). Although the Part 70 regulations provide states some opportunity to exempt or limit the amount of information on IEUs required in a Title V application, the July 21, 1992, preamble to EPA's Title V regulations (57 FR 32250, 32273), 40 CFR part 70, makes it clear that this exemption does not apply to the permit content. Therefore, Ohio's regulations at OAC 3745–77–02(E) are inconsistent with part 70. For additional discussion on this issue, please see 67 FR 19175 (April 18, 2002) (Notice of Deficiency).

2. Proposed Changes to IEU Provisions

In response to the Notice of Deficiency, Ohio has proposed to revise its regulations so that applicable requirements for IEUs are included in the federally enforceable section of its Title V permits. Specifically, Ohio has proposed six regulatory changes relating to IEUs. First, proposed revisions to OAC 3745–77–02(E)(1), which provide in part that the "federally enforceable portion of the [Title V] permit shall include all applicable requirements for all relevant emissions units at the major source," would remove language in the current rule which defines "relevant emissions units" to exclude IEUs. Thus, under the proposed revisions, applicable requirements for IEUs would need to be included in the federally

enforceable portion of Ohio's Title V permits.

Second, a proposed new provision, OAC 3745–77–07(A)(13)(a), would require IEUs that are subject to one or more applicable requirements to be listed in the federally enforceable portion of Title V permits along with the applicable requirements or the identification number of each permit to install that establishes one or more applicable requirements for the IEUs.

Third, another proposed new provision, OAC 3745–77–07(A)(13)(B), would create a presumption that monitoring, recordkeeping, and reporting requirements established for IEUs in a permit to install or under applicable rules are presumed adequate to satisfy the Title V monitoring, recordkeeping and reporting requirements of OAC 3745–77–07(A)(3). Under proposed OAC 3745–77–07(A)(13)(B), however, that presumption could be overcome if OEPA determines that additional monitoring, recordkeeping or reporting requirements are necessary to assure compliance. This proposed provision is consistent with EPA's long-standing position that the permitting authority in general has broad discretion in determining the nature of any required monitoring and that the requirement to include in a permit testing, monitoring, recordkeeping, and reporting sufficient to assure compliance does not require the permit to impose the same level of rigor with respect to all emission units. For example, it does not require extensive testing or monitoring to assure compliance with the applicable requirements for emissions units that do not have significant potential to violate emissions limitations or other requirements under normal operating conditions. Because IEUs are typically associated with lesser environmental impacts than other emission units and present little or no potential for violations of generally applicable requirements, EPA has stated that the permitting authority can provide in some cases that the status quo (*i.e.*, no monitoring) meets the requirements of Part 70.

Fourth, Ohio has proposed to add language to OAC 3745–77–08(C)(2) to indicate that group processing procedures may be used for changes to requirements for IEUs. Fifth, Ohio has proposed to revise OAC 3745–77–07(I)(2) to clarify that no contemporaneous written notification is required for "off-permit" changes involving IEUs that are not subject to one or more applicable requirements. (Contemporaneous written notification