

Thus, Executive Order 13175 does not apply to this rule.

F. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

G. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective April 23, 2003.

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 6, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(279)(i)(A)(11) and (288)(i)(D)(2) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(279) * * *

(i) * * *

(A) * * *

(11) Rule 400, revised on September 14, 1999.

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(288) * * *

(i) * * *

(D) * * *

(2) Rule 403, adopted on November 19, 1985 and revised on July 24, 2001.

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[FR Doc. 03–6809 Filed 3–21–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[Regional Docket Nos. II–2001–02, –06, –07; FRL–7472–1]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permits for Consolidated Edison Company’s 74th Street Station; the Danskammer Generating Station; and the Lovett Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final orders on petitions to object to three State operating permits.

SUMMARY: This document announces that the EPA Administrator has responded to three citizen petitions asking EPA to object to operating permits issued to three facilities by the New York State Department of Environmental Conservation (NYSDEC). Specifically, the Administrator has partially granted and partially denied each of the petitions submitted by the New York Public Interest Research Group (NYPIRG) to object to each of the State operating permits issued to the following facilities: Consolidated Edison’s 74th Street Station in New York, NY; Dynegy Northeast Generation’s Danskammer Generating Station in Newburgh, NY; and Mirant New York’s Lovett Generating Station in Tomkins Cove, NY.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioner may seek judicial review of those portions of the petitions which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final orders, the petitions, and other supporting information at the EPA Region 2 Office, 290 Broadway, New York, New York 10007–1866. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final orders for the Con Edison 74th Street Station, the Danskammer Generating Station, and the Lovett

Generating Station are available electronically at: <http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2001.htm>.

FOR FURTHER INFORMATION CONTACT:

Steven Riva, Chief, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866, telephone (212) 637-4074.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

I. Con Edison's 74th Street Station

On May 14, 2001, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for the Consolidated Edison 74th Street Station. The petition raises issues regarding the permit application, the permit issuance process, and the permit itself. NYPIRG asserts that: (1) The permit does not assure compliance with all applicable requirements as mandated by 40 CFR 70.1(b) and 70.6(a)(1) because many individual permit conditions lack adequate monitoring and are not practically enforceable; (2) DEC violated the public participation requirements of 40 CFR 70.7(h) by inappropriately denying NYPIRG's request for a public hearing; (3) the permit is based on an incomplete permit application in violation of 40 CFR 70.5(c); (4) the permit is accompanied by an insufficient statement of basis as required by 40 CFR 70.7(a)(5); (5) the permit distorts the annual compliance certification requirement of Clean Air Act section 114(a)(3) and 40 CFR 70.6(c)(5); (6) the permit does not assure compliance with all applicable requirements as mandated by 40 CFR 70.1(b) and 70.6(a)(1) because it illegally sanctions the systematic violation of applicable requirements during startup/shutdown, malfunction, maintenance, and upset conditions; and (7) the permit does not require prompt reporting of all

deviations from permit requirements as mandated by 40 CFR 70.6(a)(3)(iii)(B).

On February 19, 2003, the Administrator issued an order partially granting and partially denying the petition on the Con Edison 74th Street Station. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Include annual tune-ups and necessary parametric monitoring to ensure the turbines' compliance with their NO_x RACT emission limits; (2) revise recordkeeping provisions to require that records relating to sulfur monitoring be kept for five years; (3) include appropriate conditions for particulate matter monitoring that meets the requirements of § 70.6(a)(3)(i)(B); (4) include record keeping and reporting requirements with regard to the use of architectural coatings and sealers; (5) note the existence and applicability of the Episodic Action Plan; and (6) incorporate "Appendix A" of the opacity consent order. The order also explains the reasons for denying NYPIRG's remaining claims.

NYPIRG raises each of the above seven issues, except for the public hearing issue, in the petitions for the Danskammer Generating Station and the Lovett Generating Station, as well. In the Danskammer Generating Station petition, NYPIRG raises five additional issues: (1) The permit lacks federally enforceable conditions that govern the procedures for permit renewal; (2) the permit fails to include federally enforceable emission limits established under pre-existing permits; (3) the permit does not properly include CAA section 112(r) requirements; (4) the permit improperly describes the annual compliance certification due date; and (5) the permit does not assure Danskammer's compliance with applicable sulfur dioxide (SO₂) emission limitations. In the petition on the Lovett Generating Station, NYPIRG raises three additional issues: (1) The proposed permit lacks a compliance schedule designed to bring the Lovett Generating Station into compliance with PSD requirements; (2) the proposed permit fails to include federally enforceable emission limits established under pre-existing permits; and (3) the proposed permit does not correctly include the CAA section 112(r) requirements. In each of these petitions, the issue on monitoring is subdivided into several detailed points, some of which are permit-specific and some of which are shared among the other permits.

II. Danskammer Generating Station

On December 10, 2001, the EPA received a petition from NYPIRG,

requesting that EPA object to the issuance of the title V operating permit for the Danskammer Generating Station, on the grounds listed above. On February 14, 2003, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Specify normal operating ranges for ESP parameters and (2) delete language allowing digital recording of COM data to be replaced by manual recording. The order also explains the reasons for denying NYPIRG's remaining claims.

III. Lovett Generating Station

On November 26, 2001, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for the Lovett Generating Station, on the grounds listed above. On February 19, 2003, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Incorporate opacity monitoring to assure compliance with New York State regulations at 6 NYCRR section 211.3; and (2) incorporate all necessary requirements from the opacity consent order. The order also explains the reasons for denying NYPIRG's remaining claims.

Dated: March 6, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 03-7049 Filed 3-21-03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 125

[FRL-7472-2]

RIN-2040-AD85

Withdrawal of Direct Final Rule; National Pollutant Discharge Elimination System—Amendment of Final Regulations Addressing Cooling Water Intake Structures for New Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received adverse comment, we are withdrawing the direct final rule for "National Pollutant Discharge Elimination System—Amendment of Final Regulations Addressing Cooling Water