

Rule 3010

Acid Rain Provisions of Federal Operating Permits

(A) General

(1) Purpose:

- (a) The purpose of this rule is to provide the provisions necessary for the District to incorporate requirements from the Acid Rain Program onto FOPs issued pursuant to this Regulation.

(2) Applicability:

- (a) This rule shall apply to any affected unit as specified in 40 CFR 72.6 (incorporated herein by this reference).
- (b) This rule shall not apply to any affected unit exempted from the Acid Rain Program pursuant to the provisions of 40 CFR 72.7 and 72.8 (incorporated herein by this reference).

(3) Effect on Other Authorities

- (a) To the extent that the requirements of this regulation or this rule conflict with the requirements found in 40 CFR 72 regarding the issuance, denial, revision, reopening, renewal and appeal of the acid rain provisions of a FOP, the provisions of 40 CFR 72 shall control.
- (b) No provision of the Acid Rain Program, an application filed pursuant to this rule, the portion of a FOP issued pursuant to this rule, or a written exemption from the Acid Rain Program pursuant to 40 CFR 72.7 or 72.8 shall be construed as:
 - (i) Except as expressly provided in title IV of the Federal Clean Air Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the Federal Clean Air Act, including the provisions of title I of the Federal Clean Air Act relating to applicable National Ambient Air Quality Standards or State Implementation Plans.

- (ii) Limiting the number of allowances a unit can hold; provided, that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the Federal Clean Air Act.
- (iii) Requiring a change of any kind in any State law regulating electric utility rates and charges, affecting any State law regarding such State regulation, or limiting such State regulation, including any prudence review requirements under such State law.
- (iv) Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act.
- (v) Interfering with or impairing any program for competitive bidding for power supply in a State in which such program is established.

(B) Definitions

- (1) For the purposes of this rule all the definitions and acronyms contained in 40 CFR 72.2 and 72.3 (incorporated herein by this reference) shall apply. For the purposes of this rule for any definitions which are not contained in 40 CFR 72.2 the definition found in District Rule 3001 shall apply.

(C) Requirements

- (1) Permits:
 - (a) The designated representative of each Facility containing an affected unit shall:
 - (i) Submit a complete Acid Rain permit application, including a compliance plan, pursuant to this rule in accordance with the deadlines specified in section (D).
 - (ii) Submit, in a timely manner, any supplemental information that the District determines is necessary in order to review an Acid Rain permit application and to issue or deny an Acid Rain permit.
 - (b) The owner or operator of a Facility containing an affected unit shall:
 - (i) Obtain and maintain an Acid Rain permit.
 - (ii) Operate the affected unit in compliance with any complete Acid Rain permit application or a superseding Acid Rain permit issued by the District.

- (2) Monitoring:
 - (a) The owner or operator and, to the extent applicable, the designated representative of a Facility containing an affected unit shall comply with the monitoring requirements as set forth in 40 CFR 72.9(b) (incorporated herein by this reference) and 40 CFR 75 (incorporated herein by reference).
- (3) Sulfur Dioxide:
 - (a) The owner or operator of a Facility containing an affected unit shall comply with the requirements relating to sulfur dioxide as set forth in 40 CFR 72.9(c) (incorporated herein by this reference).
- (4) Nitrogen Oxides:
 - (a) The owner or operator of a Facility containing an affected unit shall comply with the requirements relating to Nitrogen Oxides as set forth in 40 CFR 72.9(d) (incorporated herein by this reference).
- (5) Excess Emissions:
 - (a) The owner or operator of a Facility containing an affected unit shall comply with the requirements relating to excess emissions as set forth in 40 CFR 72.9(e) (incorporated herein by this reference).
- (6) Record keeping and Reporting:
 - (a) The owner or operator of a Facility containing an affected unit shall comply with the requirements relating to Record keeping and reporting as set forth in 40 CFR 72.9(f) (incorporated herein by this reference).
- (7) Designated Representative:
 - (a) Submissions:
 - (i) Any submissions required pursuant to this rule or pursuant to any other requirement of the Acid Rain Program shall be submitted, signed and certified by the designated representative for the Facility or affected unit on behalf of which the submission is made.
 - (ii) Any submission required pursuant to this rule or pursuant to any other requirement of the Acid Rain Program shall also comply with the provisions set forth in 40 CFR 72.21(b), 72.21(c), and 72.21(d) (incorporated herein by this reference).

(b) Objections:

- (i) No objection or other communication submitted to the District or the USEPA concerning the authorization of, any submission by, any action or inaction of the designated representative (except for proper actions taken to change the designated representative or alternative designated representative or the owners and operators pursuant to the provisions of 40 CFR 72.23 shall affect any submission, action or inaction of the designated representative or the finality of any decision of the District or the USEPA under the Acid Rain Program.
- (ii) In the event of an objection or other communication, the District and/or the USEPA are not required to stay any allowance transfer, any submission, or the effect of any action or inaction under the Acid Rain Program.
- (iii) Neither the District nor USEPA will adjudicate any private legal dispute concerning the authorization or any submission, action or inaction of any designated representative, including but not limited to private legal disputes concerning the proceeds of allowance transfers.

- (8) Each affected unit and/or Facility containing an affected unit shall meet the requirements of the Acid Rain Program.

(D) Application Requirements

(1) Duty to Apply:

- (a) The designated representative of a Facility containing an affected unit shall submit a complete Acid Rain permit application by the applicable deadline as set forth in subsection (2) below.
- (b) The owner or operator of a Facility containing an affected unit shall not operate the Facility or unit without a FOP which contains the applicable requirements from the Acid Rain Program.

(2) Deadlines:

- (a) The designated representative of a Facility containing an affected unit subject to phase I of the Acid Rain Program shall submit a complete Acid Rain permit application in compliance with the deadlines set forth in 40 CFR 72.30(b)(1) (incorporated herein by this reference).

- (b) The designated representative of a Facility containing an affected unit subject to phase II of the Acid Rain Program shall submit an Acid Rain permit application as follows:
- (i) For existing affected units as specified in 40 CFR 72.6(a)(2), on or before January 1, 1996.
 - (ii) For new affected units as specified in 40 CFR 72.6(a)(3)(i), at least twenty-four (24) months before the later of January 1, 2000 or the date on which the unit commences operation.
 - (iii) For any Facility containing an affected unit as specified in 40 CFR 72.6(a)(3)(ii), at least twenty-four (24) months before the later of January 1, 2000 or the date on which the affected unit begins to serve a generator with a nameplate capacity greater than 25 MWe.
 - (iv) For any Facility containing an affected unit as specified in 40 CFR 72.6(a)(3)(iii), at least twenty-four (24) months before the later of January 1, 2000 or the date on which the auxiliary firing commences operation.
 - (v) For any Facility containing an affected unit as specified in 40 CFR 72.6(a)(3)(iv), before the latter of January 1, 1998 or March 1 of the year following the three calendar year period in which the unit sold to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis).
 - (vi) For any Facility containing an affected unit as specified in 40 CFR 72.6(a)(3)(v), before the latter of January 1, 1998 or March 1 of the year following the calendar year in which the Facility fails to meet the definition of qualifying Facility.
 - (vii) For any Facility containing an affected unit as specified in 40 CFR 72.6(a)(3)(vi), before the latter of January 1, 1998 or March 1 of the year following the calendar year in which the Facility fails to meet the definition of an independent power production Facility.
 - (viii) For any Facility containing an affected unit as specified in 40 CFR 72.6(a)(3)(vi), before the latter of January 1, 1998 or March 1 of the year following the three calendar year period in which the incinerator consumed 20 percent or more fossil fuel (on a Btu basis).

- (c) The designated representative of a Facility shall submit a complete Acid Rain permit application for each Facility with an affected unit at least 6 months prior to the expiration of an existing Acid Rain permit governing the unit during Phase II or such longer time as may be approved under District Rule 3002(B) that ensures that the term of the existing permit will not expire before the effective date of the permit for which the application is submitted.
- (3) Application Information:
- (a) A complete Acid Rain permit application shall contain all the elements set forth in 40 CFR 72.31 (incorporated herein by this reference).
- (4) Application Shield:
- (a) Once the designated representative has submitted a timely and complete Acid Rain permit application the owner or operator of the Facility containing an affected unit covered by the permit application shall be deemed to be in compliance with the requirement to have an Acid Rain permit provided that:
 - (i) Any delay in issuance of an Acid Rain permit is not caused by the failure of the designated representative to submit in a complete and timely fashion supplemental information required by the District which the District deems necessary to issue an Acid Rain permit.
 - (b) Prior to the date on which an Acid Rain permit is issued as a final District action subject to judicial review, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete Acid Rain permit application shall be deemed in compliance with the Acid Rain Program.
 - (c) A complete Acid Rain permit application shall be binding on the owner or operators and the designated representative of the Facility containing an affected unit covered by the permit application and shall be enforceable as an Acid Rain Permit from the date of submission of the permit application until the issuance or denial of such permit as a final District action subject to judicial review.
- (5) Compliance Plans and Compliance Options:
- (a) Any compliance plan submitted as a part of an Acid Rain permit application shall comply with the provisions of 40 CFR 72.40(a) (incorporated herein by this reference).

- (b) Any compliance option contained in a compliance plan shall comply with the provisions of 40 CFR 72.40(b) and 72.40(c) (incorporated herein by this reference).
- (c) Any compliance option contained in a compliance plan may be terminated in accordance with the provisions of 40 CFR 72.40(d) (incorporated herein by this reference).
- (d) The designated representative of any affected unit specified in 40 CFR 72.44(a) may submit an application for and obtain a repowering extension so long as such action complies with all the requirements, conditions and procedural requirements as set forth in 40 CFR 72.44 (incorporated herein by this reference).

(E) Permit Requirements

(1) Permit Contents:

- (a) Each Acid Rain permit issued pursuant to this rule shall contain the elements as set forth in 40 CFR 72.50 (incorporated herein by this reference).
- (b) Each Acid Rain permit issued pursuant to this rule shall:
 - (i) Contain all applicable Acid Rain requirements.
 - (ii) Be a complete and segregable portion of the FOP.
 - (iii) Not incorporate by reference information contained in any other documents, other than documents which are readily available.

(2) Permit Shield:

- (a) Each affected unit operated in accordance with an Acid Rain permit that governs the affected unit and was issued pursuant to this rule, the shall be deemed to be operating in compliance with the Acid Rain Program except as provided in 40 CFR 72.9(g)(6).

(3) Permit Issuance:

- (a) The issuance or denial of an Acid Rain permit shall follow the procedures set forth herein and any applicable provisions contained in Regulation XXX.

- (i) Within ten (10) working days following a determination that an Acid Rain permit application is complete, the District shall submit to USEPA a written notice of application completeness.
 - (ii) After an Acid Rain permit application has been determined to be complete, the District shall prepare:
 - a. A draft Acid Rain permit in accordance with the requirements set forth in 40 CFR 72.50 (incorporated herein by this reference) unless the District denies the Acid Rain permit.
 - b. A statement of basis which contains the elements set forth in 40 CFR 72.64 (incorporated herein by this reference).
 - (iii) After the draft Acid Rain permit and statement of basis have been prepared, the District shall submit a copy of these documents to USEPA.
 - (iv) Public notice and comment on the draft Acid Rain permit shall thereafter be performed pursuant to the provisions contained in District Rule 3007(A) and 3007(B).
 - (v) Following the close of the public comment period, the District shall incorporate all necessary changes into the draft Acid Rain permit and issue a proposed Acid Rain permit.
 - (vi) Following the issuance of the proposed Acid Rain permit, the District shall submit the proposed Acid Rain permit to USEPA for review.
 - (vii) Following USEPA review of the proposed Acid Rain permit, the District shall incorporate any required changes and issue or deny the Acid Rain permit or, in the alternative, allow USEPA to issue or deny the Acid Rain Permit pursuant to the provisions found in District Rule 3009(B).
- (b) No Acid Rain permit (including a draft or proposed permit) shall be issued unless USEPA has received a certificate of representation for the designated representative of the Facility containing an affected unit in accordance with 40 CFR 72.20 through 72.25 inclusive.
- (c) The District shall issue, pursuant to the provisions of this rule, Acid Rain permits to all facilities containing an affected unit and subject to Phase II of the Acid Rain Program on or before December 31, 1997 so long as:
- (i) The FOP Program for the District has been approved, including partial or interim approval, by USEPA.
 - (ii) The designated representative for the Facility submitted a timely and complete Acid Rain permit application.

- (d) Each Acid Rain permit issued on or before December 31, 1997 shall:
 - (i) Have a term of five (5) years commencing on its effective date.
 - (ii) Have an effective date which is the later of January 1, 2000 or where the affected unit is subject to the provisions of 40 CFR 72.6(a)(3) the deadline for monitor certification under 40 CFR 75.
 - (iii) Be reopened, not later than January 1, 1999, to add the Acid Rain Program requirements for nitrogen oxides provided that the designated representative of the Facility containing an affected unit has submitted a timely and complete Acid Rain permit application for nitrogen oxides pursuant to the provisions of 40 CFR 72.21.
 - a. Such reopening shall not alter the term of the Acid Rain permit.

- (4) Effect of Acid Rain permit:
 - (a) An Acid Rain permit issued pursuant to this rule shall be effective for a period of five (5) years after the date of issuance.
 - (b) An Acid Rain permit issued pursuant to this rule shall be binding on any new owner or operator or upon any new designated representative of any Facility containing an affected unit governed by the permit.
 - (c) Invalidation of the Acid Rain portion of a FOP shall not affect the continuing validity of the remainder of the FOP, nor shall invalidation of any other portion of the FOP affect the continuing validity of the Acid Rain portion of the FOP.

- (5) Appeals of Acid Rain Permit Provisions:
 - (a) Appeals of the Acid Rain permit provisions shall be conducted pursuant to the provisions of District Rule 3009 unless such appeal is to challenge the actions or decisions of USEPA in which case such appeal shall be conducted pursuant to the provisions found in 40 CFR 78.
 - (b) Appeals conducted pursuant to the provisions of District Rule 3009(A) shall be heard and decided by the District Hearing Board within 90 days of the filing of the appeal.

- (c) The District shall serve written notice upon USEPA of any appeal filed pursuant to the provision of District Rule 3009 and of any judicial review of a decision of the District Hearing Board relating to such appeal within 30 days of the filing of the appeal to the District Hearing Board or of the service of the action for judicial review upon the District.
- (d) The District will not oppose the intervention of USEPA in any appeal of an Acid Rain permit pursuant to District Rule 3009 or the judicial review of the decision of the District Hearing Board.
- (e) The District shall serve written notice upon USEPA of any determination or order in an administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an Acid Rain permit issued pursuant to this rule.
 - (i) Upon notification of such determination or order, USEPA shall have the opportunity to review the determination or order and to veto or revoke the Acid Rain permit pursuant to the provisions of District Rule 3009(B).

(F) Permit Revision Requirements

- (1) General
 - (a) This subsection governs revisions to the Acid Rain permit and shall supercede the provisions specified in District Rule 3005 with regards to any revisions of the Acid Rain portion of the FOP.
 - (b) Proposed revisions to Acid Rain permits may be submitted for approval at any time.
 - (c) No Acid Rain permit revision or reopening shall affect the term of the Acid Rain permit.
 - (d) No Acid Rain permit revision shall excuse any violation of an Acid Rain Program requirement which occurred prior to the effective date of the revision.
 - (e) The terms of the Acid Rain permit shall apply while the Acid Rain permit revision is pending.

- (f) Any determination or interpretation by the District or the State, including the District Hearing Board or a state court, modifying or voiding any Acid Rain permit provision shall be subject to review by USEPA pursuant to the provisions found in 40 CFR 70.8(c) unless the determination or interpretation is an administrative amendment approved in accordance with subsection (F)(4) below.
 - (g) The standard requirements as set forth in section (C) herein or in 40 CFR 70.9 shall not be modified or voided by an Acid Rain permit revision.
 - (h) Any Acid Rain permit revision involving the incorporation of a compliance option that was not submitted for approval or consent during the Acid Rain permit issuance process shall meet the requirements for applying for such option as set forth in 40 CFR 72.40 and 40 CFR 70.44.
 - (i) If an Acid Rain permit revision is not designate as suitable for permit modification or fast-track modification then the District may, in its discretion, determine which type of revision is appropriate.
- (2) Acid Rain Permit Modifications:
- (a) Revisions to an Acid Rain permit which are described in 40 CFR 72.81(a) (incorporated herein by reference), shall follow the Acid Rain permit modification procedure as set forth herein.
 - (b) Revisions to an Acid Rain permit which are described in 40 CFR 72.80(b) (incorporated herein by reference), may at the option of the designated representative submitting the Acid Rain permit revision follow either the Acid Rain permit modification procedure as set forth herein or the Acid Rain permit fast-track modification procedure as set forth in subsection (F)(3) below.
 - (c) Acid Rain permit modification procedures shall follow the procedure for Acid Rain permit issuance as set forth in subsection (E)(3) herein.
- (3) Acid Rain Permit Fast-Track Modifications:
- (a) Acid Rain permit revisions which are determined to be subject to the Acid Rain permit fast-track modification procedures shall follow the procedures set forth herein.

- (i) The designated representative shall serve a copy of the fast-track modification on USEPA, the District, and any person who is entitled to written notice pursuant to 40 CFR 72.65(b)(1)(ii), 72.65(b)(1)(iii) and 40 CFR 72.65(b)(1)(iv). Such service to the District shall occur on or before the commencement of the public comment period required by subsection (F)(3)(a)(iii) below.
- (ii) Within five (5) working days of serving such copies, the designated representative shall give public notice of the fast-track modification by publication in a daily newspaper of general circulation in the area where the Facility is located.
- (iii) The notice shall provide:
 - a. A thirty (30) day period, commencing upon the date of publication of the notice, for the public to comment to the District regarding the fast-track modification.
 - b. That such comments must be submitted, in writing, to the District and to the designated representative to be considered in the issuance process.
- (iv) Within thirty (30) days after the close of the public comment period, the District shall consider the fast-track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the fast-track modification.
- (v) Any approved fast-track modification shall be effective immediately upon issuance after submission to USEPA for review.

(4) Acid Rain Permit Administrative Amendments:

- (a) Revisions to an Acid Rain permit which are described in 40 CFR 72.83(a), which is incorporated herein by reference, shall follow the Acid Rain permit administrative amendment procedure as set forth herein.
- (b) Acid Rain permit administrative amendments shall use the administrative amendment procedure as set forth in District Rule 3005(A).

(5) Acid Rain Permit Automatic Amendments:

- (a) Revisions to an Acid Rain permit which are described in 40 CFR 72.84, (incorporated herein by reference), shall be deemed to become a part of the Acid Rain permit by operation of law without any further review.

(6) Acid Rain Permit Reopenings:

- (a) Acid Rain permits shall be reopened for any of the reasons set forth in District Rule 3006(A) and to add nitrogen oxides requirements as set forth in subsection (E)(3)(d)(iii) above.
- (b) The reissuance of an Acid Rain permit which has been reopened shall follow the procedure for Acid Rain permit issuance as set forth in subsection (E)(3).

(G) Compliance Certification

- (1) The designated representative of a Facility containing an affected unit(s) which are governed by an approved repowering plan shall comply with the provisions set forth 40 CFR 72.94 (incorporated herein by reference).

(H) Violations

- (1) A violation of any Acid Rain permit condition imposed pursuant to this rule shall be a violation of this rule.
- (2) Any provision of the Acid Rain Program, of this rule or of permit conditions imposed pursuant to this rule which:
 - (a) Applies to a Facility containing an affected unit, or the designated representative of such a Facility, shall also apply to the owners and operators of such a Facility and of the affected unit.
 - (b) Applies to an affected unit, or the designated representative of such affected unit shall also apply to the owners and operators of such a unit.
- (3) No owner, operator and/or designated representative of an affected unit shall be liable for a violation by any other affected unit of which they are not the owner, operator or designated representative and which is located at a Facility of which they are not the owner, operator, or designated representative, except as provided for pursuant to 40 CFR 72.44; Section 407 of the Federal Clean Air Act (42 U.S.C. §7651f); and requirements for units with a common stack under 40 CFR 75, including 40 CFR 75.16, 75.17, and 75.18.

- (4) Any person who knowingly violates any requirement or prohibition of the Acid Rain Program, a complete Acid Rain permit application, an Acid Rain permit, or a written exemption under 40 CFR 72.7 or 72.8, including any requirement for the payment of any penalty owed to the United States, shall be subject to an enforcement proceeding pursuant to Federal Clean Air Act §113 (42 U.S.C. §7413) and/or any applicable provision of state law.
- (5) Any person who knowingly makes a false, material statement in any record, submission or report under the Acid Rain program shall be subject to criminal enforcement pursuant to Federal Clean Air Act §113 (42 U.S.C. §7413); to 18 U.S.C. §1001 and to criminal or civil enforcement pursuant to any applicable provision of state law.
- (6) Each violation of a provision of this rule; 40 CFR 72, 73, 75, 77 and 78; or of Federal Clean Air Act §§407 and 410 by an affected unit, the owner or operator or designated representative of such unit, or a Facility containing an affected unit shall be considered as a separate violation of the Federal Clean Air Act or of this rule.

[SIP: Not SIP. Title V Program Amendment Submitted on _____, Title V Program Interim Approval 2/27/97 62 FR 8878.]