

the orders, stipulations and exhibit A's and attachments to the stipulations.

(C) All portions of the October 20, 1998 East Helena Pb SIP submitted other than the orders, stipulations and exhibit A's and attachments to the stipulations.

(D) November 16, 1999 letter from Art Compton, Division Administrator, Planning, Prevention and Assistance Division, Montana Department of Environmental Quality, to Richard R. Long, Director, Air and Radiation Program, EPA Region VIII.

(E) September 9, 1998 letter from Richard A. Southwick, Point Source SIP Coordinator, Montana Department of Environmental Quality, to Richard R. Long, Director, Air and Radiation Program, EPA Region VIII.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[SIP NO. MT-001-0030a; FRL-6985-8]

#### Clean Air Act Approval and Promulgation of Air Quality Implementation Plan; Montana; East Helena Lead State Implementation Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is taking direct final action approving revisions to the East Helena Lead (Pb) State Implementation Plan (SIP) submitted by the Government of Montana on November 27, 2000. The revisions make minor modifications to Asarco's control strategy in the Pb SIP. The intended effect of this action is to make the revisions federally enforceable. The EPA is taking this action under sections 110 and 301 of the Clean Air Act (Act).

**DATES:** This rule is effective on August 17, 2001, without further notice, unless EPA receives adverse comment by July 18, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the *Federal Register* informing the public that the rule will not take effect.

**ADDRESSES:** Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business

hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202 and copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

**FOR FURTHER INFORMATION CONTACT:** Kerri Fiedler, EPA, Region VIII, (303) 312-6493 or Laurie Ostrand, EPA, Region VIII, (303) 312-6437.

#### SUPPLEMENTARY INFORMATION:

##### Definitions

For the purpose of this document, we are giving meaning to certain words as follows:

(i) The words or initials Act of CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.

(iii) The initials Pb mean or refer to the element lead.

(iv) The initials MDEQA mean or refer to the Montana Department of Environmental Quality.

(v) The initials SIP mean or refer to State Implementation Plan.

(vi) The words State or Montana mean the State of Montana, unless the context indicates otherwise.

##### Background

On November 6, 1991 (56 FR 56694), we designated the East Helena area as nonattainment for Pb. This designation was effective on January 6, 1992 and required the State to submit a Part D SIP by July 6, 1993. On August 16, 1995, July 2, 1996 and October 20, 1998 the Governor of Montana submitted SIP revisions to meet the Part D SIP requirements. On October 10, 2000 (65 FR 60144) we proposed to partially approve and partially disapprove these State submittals. In a separate action published today we are finalizing our proposal to partially approve and partially disapprove the State submittals.

Subsequent to our October 10, 2000 proposed rulemaking, the State of Montana submitted another revision to the East Helena Pb SIP on November 27, 2000. Since the State's November 27, 2000 submittal revises portions of the plan on which we proposed action, we believe we should act on the new

provisions at the same time we take final action on our proposed rulemaking, so that the end result will be a federally approved plan that is consistent with the current State plan (except for those provisions of the plan that we are partially disapproving in a separate action published today).

#### *Review of State's November 27, 2000 Submittal*

With the November 27, 2000 submittal, the State is revising the control strategy for the Asarco lead smelter in East Helena, Montana, by removing reference to the Pb bullion granulating process in the Dross Building from the control plan and by renaming several emission points and a process vessel at the Asarco facility. The revisions were effective at the State level on September 15, 2000.

#### Pb Granulating Process Changes

When the State developed the Pb SIP for East Helena (SIP submitted on August 16, 1995), at the request of Asarco, the SIP referenced a new granulating technology in the Dross Building. We proposed approval of this SIP on October 10, 2000 (65 FR 60144). Subsequently, Asarco found that the granulating technology did not work well and discontinued its use, reverting back to conventional drossing technology in 1997. The MDEQ has concluded that discontinuing the granulating technology and reverting back to the conventional technology will not change any of the inputs or assumptions in the modeling demonstration used to demonstrate compliance with the National Ambient Air Quality Standards (NAAQS) for Pb in East Helena. Additionally, the MDEQ has concluded that changing the drossing process will not have an effect on actual levels of fugitive Pb emissions from the Dross Plant building or on actual levels of Pb emissions from the Dross Plant baghouse stack. The MDEQ reached these conclusions based on the following information:

- The subject drossing activities are conducted entirely within the Dross Plant building;
- The Dross Plant building is completely enclosed and ventilated to the Dross Plant baghouse;
- There will be no change in the fugitive emission rate with the conventional technology; and
- There will be no change in emissions from the Dross Plant baghouse stack.

We have reviewed the MDEQ's conclusions and supporting documentation; we agree that there will be no change in levels of emissions from

the Dross Plant building or Dross Plant baghouse stack and no changes in the inputs and assumptions used in the Pb NAAQS attainment demonstration. Therefore, we are approving the revisions to the SIP that remove all references to the granulating process in the Dross Plant. The specific sections of exhibit A to Asarco's stipulation that are being revised thus include: Sections 3(A)(12)(a), 3(A)(12)(p), 3(A)(12)(q), 3(A)(12)(r), and 5(G)(4). These revisions, which became effective on September 15, 2000, replace the same numbered sections in previously approved SIP revisions.

#### Renaming of Emission Points and Process Vessel

The November 27, 2000 submittal also renamed two emission points and a process unit to better reflect the current configuration of Asarco's East Helena facility. All references to the "Crushing Mill Baghouses # 1 and #2" and "Crushing Mill Baghouse Stacks #1 and #2" have been replaced with "Sinter Plant Roof Baghouses #7 and #8." We understand that there is no change in emissions from or in waste gas streams vented to these baghouses. We are approving the renaming of these baghouses. The specific sections of exhibit A to Asarco's stipulation that are being revised to reflect the new baghouse names include: sections 1(B)(4), 1(B)(5), 3(A)(3), 3(A)(4), 3(A)(16)(a), 5(D)(1), 5(D)(2), 8(A)(3), 9(B)(2), and 9(B)(3). These revisions, which became effective on September 15, 2000, replace the same numbered sections in previously approved SIP revisions.

Finally, the November 27, 2000 submittal also renamed the "60-ton kettle" in the Dross Plant to the "#4 kettle." Again, this was done to better represent the current configuration at the Asarco facility. We understand that there is no change in emissions from the "60-ton kettle." We are approving the renaming of the "60-ton kettle" to the "#4 kettle." The specific sections of exhibit A to Asarco's stipulation that are being revised to reflect the new kettle name include: sections 3(A)(12)(a), 3(A)(12)(i), 3(A)(12)(m), 3(A)(12)(o) and 3(A)(12)(p). These revisions, which became effective on September 15, 2000, replace the same numbered sections in previously approved SIP revisions.

## II. Final Action

We are approving the State's November 27, 2000 submittal, which revised the part of the control strategy related to the Asarco Pb smelter by removing references to the Pb bullion granulating process (in the Dross Plant)

and by renaming several emission points and a process vessel at the Asarco facility. The specific sections of exhibit A to Asarco's stipulation that are being revised include: 1(B)(4), 1(B)(5), 3(A)(3), 3(A)(4), 3(A)(12)(a), 3(A)(12)(i), 3(A)(12)(m), 3(A)(12)(o), 3(A)(12)(p), 3(A)(12)(q), 3(A)(12)(r), 3(A)(16)(a), 5(D)(1), 5(D)(2), 5(G)(4), 8(A)(2), 8(A)(3), 9(B)(2), and 9(B)(3). These revisions, which became effective on September 15, 2000, replace the same-numbered sections in previously approved SIP revisions.

We caution that if Asarco is subject to more stringent requirements under other provisions of the Act (e.g., section 111, Part C, or SIP-approved permit programs under Part A), our approval of this SIP revision would not excuse Asarco from meeting these other more stringent requirements. Also, our approval of this SIP revision is not meant to imply any sort of applicability determination under other provisions of the Act (e.g., section 111, Part C, or SIP approved permit programs under Part A).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments on this minor revision to the Lead SIP. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective August 17, 2001, without further notice unless the Agency receives adverse comments by July 18, 2001. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and

imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 (Public Law 104-4). This rule also does 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), nor will it 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), because it merely approves 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 rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission 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. As required by section 3 of Executive order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive order 12630 (53 FR 8859, March 15, 1988) by examining the

takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This 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.*).

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. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

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 August 17, 2001. 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, Lead, Reporting and recordkeeping requirements.

Dated: May 16, 2001.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

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 BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(53) to read as follows:

##### § 52.1370 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(53) The Governor of Montana submitted minor revisions to Asarco's control strategy in the East Helena Lead SIP on November 27, 2000.

(i) Incorporation by reference.

(A) Board order issued on September 15, 2000, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Asarco dated July 18, 2000. The July 18, 2000 stipulation revises the following sections in the previously adopted exhibit A to the stipulation: 1(B)(4), 1(B)(5), 3(A)(3), 3(A)(4), 3(A)(12)(a), 3(A)(12)(i), 3(A)(12)(m), 3(A)(12)(o), 3(A)(12)(p), 3(A)(12)(q), 3(A)(12)(r), 3(A)(16)(a), 5(D)(1), 5(D)(2), 5(G)(4), 8(A),(2), 8(A)(3), 9(B)(2), and 9(B)(3). These revisions, which became effective on September 15, 2000, replace the same-numbered sections in previously approved SIP revisions.

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[IL204-2; FRL-6998-2]

#### Approval and Promulgation of Air Quality Implementation Plans; State of Illinois; Oxides of Nitrogen

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** On April 3, 2001, the EPA proposed to approve a draft statewide rule to control the emissions of Oxides of Nitrogen (NO<sub>x</sub>) from Electric Generating Units (EGUs) in the State of Illinois. Illinois submitted this rule for parallel processing on October 20, 2000. The adopted rule provides NO<sub>x</sub> emission reductions to support attainment of the one-hour ozone standard in the Metro-East/St. Louis ozone nonattainment area. In the April 3, 2001, proposed rule, EPA noted that significant changes in the rule between the version upon which EPA's proposed rule is based and the final adopted version, other than those changes resulting from issues discussed in the April 3, 2001, proposed rule, would

require EPA to prepare and publish a new EPA proposed rule on Illinois' subsequent submittal of the adopted rule. Because Illinois' final rule submitted on May 8, 2001, did not contain any significant unforeseen changes, EPA is responding to public comments received in response to its proposed rule and announcing final approval of the State adopted rule.

**DATES:** This final rule is effective July 18, 2001.

**ADDRESSES:** You may obtain copies of the State Implementation Plan revision request at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please telephone John Paskevicz at (312) 886-6084 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** John Paskevicz, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886-6084, E-Mail Address: paskevicz.john@epa.gov.

#### SUPPLEMENTARY INFORMATION:

Throughout this document, the terms "you" and "me" refer to the reader of this final rule and to sources subject to the State rule, and the terms "we," "us," or "our" refers to the EPA.

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