EPA-APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Comments
Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control				
* * * * * * *				
Class II Operating Permits				
* * * * * * *				
K.A.R. 28–19-564	Permit-by-Rule; Sources with Actual Emissions Less Than 50 Percent of Major Source Thresholds.	10/04/02	3/26/03 and FR page citation.	
* * * * * * *				

* * * * *

[FR Doc. 03–7051 Filed 3–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA099–5048; FRL–7472–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of Revision to Opacity Limit for Dryer Stacks at Georgia-Pacific Corporation Softboard Plant in Jarratt, VA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revised opacity limit for dryer zone stacks #1 and #2 associated with the Georgia Pacific Corporation (GP) Plant in Jarratt, Virginia. The new opacity limit is contained in a consent order between the Virginia Department of Environmental Quality (DEQ) and GP. The consent order was submitted by DEQ as a State Implementation Plan (SIP) revision on February 3, 1999.

EFFECTIVE DATE: This final rule is effective on April 25, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 3, 1999, DEQ submitted a SIP revision to revise the opacity limits for dryer zone stacks #1 and #2 at the GP plant in Jarratt, Virginia. The new limits are contained in Consent Order No. 50253 which states that GP shall not exceed 50 percent opacity from the softboard dryer zone stacks except for one six-minute period in any one hour of not more than 60 percent opacity. GP must also perform stack tests every two years to determine compliance with the particulate matter standards in 9 VAC 5–40–260 of the Commonwealths regulations and perform quarterly visible emissions evaluations. The consent order also provides that the source may have a waiver of 60 percent opacity for one six-minute period in any hour during periods of start-up, shutdown and malfunction.

On July 19, 2000 (65 FR 44683), EPA published a direct final rule approving the SIP revision for revised opacity limits for dryer zone stacks #1 and #2, with the exception of the opacity waiver for periods of start-up, shutdown and malfunction. EPA published the final rule without prior proposal because we viewed this as a noncontroversial revision and anticipated no adverse comments. On the same day (65 FR 44709), EPA published a notice of proposed rulemaking (NPR) should adverse comments be filed. Adverse comments were received and the direct final rule was withdrawn on August 30, 2000 (65 FR 52650).

Other specific details on the consent order and EPA's analysis may be found in the direct final rule and will not be restated here.

II. Response to Public Comment

EPA received adverse comments on our proposed approval of the revised opacity limits for the GP facility. A summary of those comments and EPA's responses are provided as follows:

Comment: The commentor notes that GP has asked for relief from an opacity limit that the facility has been subject to for at least ten years and raised the possibility that emissions may have increased due to a modification at the plant.

Response: The Technical Support Document prepared by DEQ in support of the SIP revision indicates that GP is an existing source for which construction, modification or relocation occurred prior to March 17, 1972 and that the dryers, which date back to 1948, have never been modified.

EPA and DEQ conducted a joint inspection of the facility on March 12, May 20 and May 21, 1997 for compliance with the Virginia SIP, including Rule 4–1 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions). These inspections prompted EPA to issue a notice of violation to GP based on the observation of visible emissions from dryer #2 in excess of the SIP limits. On July 1, 1997, EPA issued a Clean Air Act section 114 request for information, testing and monitoring to GP's Jarratt facility. In response to this request, GP performed stack tests for particulate matter emissions on both dryer stacks using EPA Reference Methods 5 and 202 as well as concurrent visible emission testing. These tests confirmed that both stacks were in compliance with the particulate matter standards but that dryer stack #2 had emissions in excess of the opacity limit. GP's request for a waiver is based on the results of this testing. There is nothing in DEQ's Technical Support Document to indicate that the facility has requested the waiver due to increased emissions associated with a

modification at the plant or that GP has ever been able to comply with the opacity standard.

Comment: The commentor interprets the opacity limit waiver provision in DEQ's regulations at 9 VAC 5–40–120 to mean that a waiver cannot be granted unless emission test data shows that there is no correlation between particulate matter or volatile organic compound (VOC) emissions and opacity. The commentor further notes that it appears that VOC emissions were not considered in evaluating whether the waiver was appropriate.

Response: The waiver provision in 9 VAC 5–40–120 states that a waiver may be granted provided that ''a technical decision is reached that the plume opacity observations * * * are not representative of the pollutant loading of the plume.'' Opacity observations are generally viewed as a surrogate for monitoring particulate matter emissions. In fact, it is highly unlikely that any source could demonstrate that there is absolutely no correlation between opacity and particulate matter emissions. However, DEQ's regulations appropriately use the term ''representative'' as a test for whether or not a waiver should be considered. In other words, a waiver would only be appropriate if existing opacity limits are incapable of representing or ensuring compliance with a pollutant loading standard, in this case, the emission standard for particulate matter. Based on the testing conducted by GP, the new opacity standard granted by the waiver will be representative of compliance with Virginia's particulate matter standard.

EPA did not consider VOC emissions in our evaluation of the waiver because opacity has not been generally established as an accurate or appropriate surrogate for VOC emissions.

Comment: The Commentor questioned whether the relaxation of the opacity limit will result in particulate matter or VOC emission increases that could subject the facility to new source review requirements, specifically the prevention of significant deterioration (PSD) program.

Response: As noted elsewhere in this document, the new opacity limit is based on stack testing and visible emissions observations conducted during normal operating conditions for the existing facility. The new opacity limit is being established to accurately reflect the observed visible emissions that correspond to actual measured particulate matter emissions from the dryers. A SIP relaxation would only trigger PSD if the relaxation would have the potential to allow a significant increase in emissions above an actual emissions baseline. Since the new opacity limit is based on actual criteria pollutant emission levels, it does not have the potential to significantly increase emissions above PSD thresholds.

Comment: The commentor questioned whether EPA considered the impact of increased VOC emissions on the Richmond area, which has previously been designated as an ozone nonattainment area.

Response: As discussed previously, the new opacity limit reflects existing operations and pollutant emission levels at the GP facility. Regardless of whether opacity is an appropriate indicator of VOC emissions, the opacity limit is being changed to reflect the visible emissions occurring during actual operating conditions. There is no reason to conclude that making this adjustment would permit the facility to increase its VOC emissions.

Comment: The commentor states that the purpose of the Clean Air Act is to protect and enhance air quality so as to promote the public health and welfare and believes that the new opacity limit fails to do this. He also questions why the facility was not required to install economically reasonable control technology to meet a lower opacity limit.

Response: EPA agrees with the commentor in so far as one of the purposes of subchapter I of the Clean Air Act is to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.'' 42 U.S.C.A. 7401(b)(1). This subchapter outlines the specific requirements that EPA and states must do to fulfill this purpose including, but not limited to establishing ambient air quality standards, imposing standards of performance for stationary sources and sources of hazardous air pollutants, adopting permit programs for new and modified sources and state implementation plans for achieving and maintaining ambient air quality standards. In other words, subchapter I of the Clean Air Act establishes specific requirements that apply equally to many emission sources to ensure that its purposes are met. With respect to the GP facility, the Virginia SIP has had an opacity limit waiver in place since the mid-1980s. The waiver provision does not require the source to consider or install reasonably available control technology. Furthermore, there is no indication at this time that any other state or federal requirement established under subchapter I of the CAA would preclude granting the waiver or to require the source to consider economically available control technology. Therefore, EPA believes that approval of this SIP revision is consistent with the purposes and requirements of subchapter I of the Clean Air Act and that it is not within EPA's authority to require an analysis of reasonably economical control technology prior to approving the new opacity limit for GP as a SIP revision.

III. Final Action

EPA is approving Consent Order No. 50253, with the exception of the opacity waiver during periods of start-up, shutdown and malfunction, as a revision to the Virginia SIP. The revision consists of revised opacity limits for dryer zone stack #1 and #2 located at the Georgia-Pacific Softboard Plant in Jarratt, Virginia.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege

law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law, any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.'' Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

A. General 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. 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 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 (Pub. L. 104–4). This 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 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 ''Protection of Children from Environmental Health Risks and Safety Risks'' (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. 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.*).

B. Submission to Congress and the Comptroller General

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 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) 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 today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for one named source.

C. 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 27, 2003. Filing a petition for reconsideration by the Administrator of this final rule to approve revised opacity limits for the Georgia Pacific Softboard Plant in Jarratt, Virginia 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, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 19, 2003.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 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 VV—Virginia

2. In § 52.2420, the table in paragraph (d) is amended by adding the entry for Georgia Pacific—Jarratt Softboard Plant at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED VIRGINIA SOURCE—SPECIFIC REQUIREMENTS

Source name	Permit/order or registration No.	State effectivePdate	EPA approval date	40 CFR part 52 citation
*	*	*	*	*
Georgia Pacific—Jarratt Softboard Plant.	Registration No. 50253.	9/28/98	[3/26/03 Federal Register cite].	40 FR 52.2420(d); NOTE: In Section E, Provision 1, the portion of the text which reads'' * * * and during periods of start-up, shutdown, and malfunction.'' is not part of the SIP.

[FR Doc. 03–7244 Filed 3–25–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.021017239 2322–02; I.D. 032003B]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Quarter I Fishery for Loligo Squid

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the directed fishery for Loligo squid in the exclusive economic zone (EEZ) will be closed effective March 25, 2003. Vessels issued a Federal permit to harvest Loligo squid may not possess or land more than 2,500 lb (1.13 mt) of Loligo squid per calendar day for the remainder of the quarter (through March 31, 2003). This action is necessary to prevent the fishery from exceeding its Quarter I quota and allow for effective management of this stock.

DATES: Effective 0001 hours, March 25, 2003, through 2400 hours, March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail *paul.h.jones@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Regulations governing the *Loligo* squid fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The 2003 specification of DAH for *Loligo* squid was set at 16,872.5 mt (68 FR 57, January 2, 2003). This amount is allocated by quarter, as shown below.

TABLE. 1 *Loligo* SQUID QUARTERLY ALLOCATIONS.

Quarter	Percent	Metric Tons [1]	Research Set-aside
I (Jan-Mar)	33.23	5,606.7	N/A
II(Apr-Jun)	17.61	2,971.3	N/A
III(Jul-Sep)	17.3	2,918.9	N/A
IV (Oct-Dec)	31.86	5,375.6	N/A
Total	100	16,872.5	127.5

[1]Quarterly allocations after 127.5 mt research set-aside deduction.

Section 648.22 requires NMFS to close the directed Loligo squid fishery in the EEZ when 80 percent of the quarterly allocation is harvested in Quarters I, II and III, and when 95 percent of the total annual DAH has been harvested. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Loligo* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 80 percent of the DAH for *Loligo* squid in Quarter I will be harvested. Therefore, effective 0001 hours, March 25, 2003, the directed fishery for *Loligo* squid is closed and vessels issued Federal permits for Loligo squid may not possess or land more than 2,500 lb (1.13 mt) of Loligo. Such vessels may not land more than 2,500 lb (1.13 mt) of *Loligo* during a calendar day. The directed fishery will reopen effective 0001 hours, April 1, 2003, when the Quarter II quota becomes available.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 20, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–7242 Filed 3–21–03; 2:37 pm]

BILLING CODE 3510–22–S