

## Environment

We considered the environmental impact of this rule and concluded that, under, Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A “Categorical Exclusion Determination” is available in the docket where indicated under

### ADDRESSES.

## Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

## Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In § 117.287, paragraph (a–1) is revised to read as follows:

#### § 117.287 Gulf Intracoastal Waterway.

\* \* \* \* \*

(a–1) The draw of the Gasparilla Island Causeway drawbridge, mile 34.3, at Boca Grande shall open on signal; except that from January 1 to May 31, from 7 a.m. to 5 p.m., the draw need

open only on the hour, quarter hour, half hour and three quarter hour.

\* \* \* \* \*

Dated: February 8, 2002.

**John E. Crowley, Jr.,**

*Captain, U.S. Coast Guard, Commander  
Seventh Coast Guard District, Acting.*

[FR Doc. 02–4206 Filed 2–20–02; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[OH118–1a; FRL–7133–8]

### Approval and Promulgation of Implementation Plans; OH

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) approves the State Implementation Plan (SIP) for New Source Review (NSR) provisions for nonattainment areas for the Ohio Environmental Protection Agency (OEPA). This action follows up an April 22, 1996 rulemaking action, in which EPA proposed to conditionally approve the requested revisions to the Ohio Administrative Code (OAC). Since that rulemaking action, OEPA has submitted a series of revisions to address problems that were preventing full approval and to make other, approvable changes in the rules. The rules incorporate the general NSR provisions applying to both attainment and nonattainment areas. Other rules incorporate the NSR provisions that only apply to nonattainment areas. EPA also approves the rules for public notice procedure in a August 10, 1999 SIP revision request made by OEPA. These rules apply to air pollution construction permits issued under the attainment and nonattainment parts of the SIP.

**DATES:** This rule is effective on April 22, 2002, unless the EPA receives relevant adverse written comments by March 25, 2002. If adverse comment is received, the EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be sent to:

Pamela Blakley, Chief, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Kaushal Gupta at (312) 886–6803 or Jorge Acevedo at (312) 886–2263 before visiting the Region 5 office.

### FOR FURTHER INFORMATION CONTACT:

Kaushal Gupta, Environmental Engineer, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6803. For further information regarding OEPA’s rules for public notice procedure, please contact Jorge Acevedo, Environmental Engineer, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–2263.

**SUPPLEMENTARY INFORMATION:** This supplementary information section is organized as follows:

- A. What is the purpose of this document?
- B. Who is affected by this action?
- C. What is the history of OEPA’s NSR program?
- D. How are OEPA’s NSR rules structured?
- E. Are OEPA’s NSR general nonattainment rules now approvable?
- F. Are OEPA’s NSR attainment rules now approvable?
- G. Are OEPA’s rules for public notice procedure approvable?
- H. What comments have the public submitted, and what are EPA’s responses?
- I. What is today’s final action?

### A. What Is the Purpose of This Document?

This document is our approval of the SIP revision request that OEPA has submitted for its NSR program. In part, this document follows up on our April 22, 1996 proposed rulemaking action (61 FR 17669), in which we proposed to conditionally approve the SIP for general NSR rules and NSR rules for nonattainment areas. In this document, we address a series of SIP revisions made by OEPA since our April 22, 1996 proposal and explain why those revisions are approvable. We also approve additions to the SIP for general NSR language and for public notice procedures.

### B. Who Is Affected by This Action?

Because the fully approved NSR program is similar to the program that OEPA already operates under delegated

authority, air pollution sources will generally not be affected by this action. Under the additional public notice procedures, however, people must file NSR permit appeals with OEPA rather than with the EPA Environmental Appeals Board as they have been doing under the delegated program.

### C. What Is the History of Ohio's NSR Program?

OEPA submitted its first NSR SIP revision request on January 31, 1972, and submitted replacement regulations on June 6, 1973. The regulations submitted by the State provided requirements, such as best available technology, that were meant to be uniformly applied throughout the State.

The Clean Air Act Amendments (CAAA) of 1977, however, required States to go further than uniformly applied regulations. The CAAA of 1977 provided for the designation of areas within a State as "attainment" or "nonattainment." An "attainment" area meets the National Ambient Air Quality Standards (NAAQS) for one of six criteria pollutants: Total suspended particulates, sulfur dioxide, ozone, carbon monoxide, nitrogen dioxide and lead. A "nonattainment" area does not meet the NAAQS for one or more pollutants. The CAAA of 1977 required States to adopt more stringent regulations, such as offsets and lowest achievable emission rate (LAER), for new pollution sources in nonattainment areas.

OEPA submitted a request to incorporate revised regulations in the SIP on October 4, 1982, and January 24, 1993, in order to comply with the CAAA of 1977. These revised regulations sought to add the offset requirements to the SIP by incorporating Appendix S to Title 40, Part 51 of the Code of Federal Regulations. We granted only limited approval of the revised regulations on September 8, 1993 (58 FR 47214), stating that the regulations did not satisfy the nonattainment area planning requirements of Title I, Part D of the Clean Air Act (CAA).

The CAAA of 1990 imposed yet further NSR requirements for nonattainment areas. Pursuant to these latter amendments, OEPA submitted a request to revise the entire SIP package on August 20, 1993. We proposed to disapprove the SIP revision request because it was not sufficient to satisfy the Part D requirements of the CAA on March 4, 1994 (59 FR 10349). The final disapproval of the State request was published on September 21, 1994 (59 FR 48392).

OEPA submitted another SIP revision request on March 1, 1996. On April 22,

1996 (61 FR 17669), we proposed to conditionally approve the general and nonattainment provisions in the SIP. We stated that the proposed provisions were deficient for not providing a definition for "pollution control project." We stated that this deficiency had to be corrected in order for the nonattainment provisions to be fully approved. OEPA subsequently submitted revisions to its request dated March 1, 1996, April 16, 1997, September 5, 1997, December 4, 1997, and April 21, 1998. We have not taken formal action on our proposed conditional approval of the nonattainment NSR program, nor have we previously acted on the subsequent SIP revision requests. The subsequent SIP revision requests allow us to fully approve the program for reasons described below.

The CAA requires that the public be given sufficient time to comment on a permit before the permit is issued. On August 19, 1999, OEPA submitted a request for approval of the incorporation of OAC 3745-47-01, 3745-47-02, 3745-47-03, 3745-47-05, 3745-47-07, and 3745-47-08(D) into the SIP.

### D. How Are OEPA's NSR Rules Structured?

Part D of Title I of the CAA requires OEPA to submit a SIP revision for NSR rules for nonattainment areas. OEPA submitted this SIP in the form of OAC 3745-31-21 to 3745-31-27. These rules were the subject of our April 22, 1996 proposed conditional approval. OEPA also submitted general NSR provisions applying to both attainment and nonattainment areas in the form of OAC 3745-31-01 to 3745-31-10.

Part C of Title I of the CAA requires public notice procedures for attainment areas. 40 CFR 51.165 and 51.166 contain the requirements for an NSR permitting program and for the public noticing of permits. OEPA satisfied these requirements by submitting OAC 3745-47-01, 3745-47-02, 3745-47-03, 3745-47-05, 3745-47-07 and 3745-47-08(D).

### E. Are OEPA's NSR General and Nonattainment Rules Now Approvable?

Yes, because OEPA has submitted rules that correct the deficiency that had prevented us from fully approving the rules. The January 21, 1997 submittal introduced a definition for "pollution control project" at OAC 3745-31-01(TT). OEPA's definition comports with the Federal definition at 40 CFR 51.165 (a)(1)(xxv).

The OEPA submittals subsequent to the March 1, 1996 revision request made some other definitional changes that we find approvable. The submittals amended or added the definitions for

the following terms in OAC 3745-31-01 to make the Rule more consistent with 40 CFR 51: "Actual emissions," "electric utility steam generating unit," "major modification," "reactivation of a very clean coal-fired electric utility steam generating unit," "repowering," and "representative actual emissions." Because these amendments and additions make the Rule more consistent with Federal regulations, we find them approvable.

The submittals amended or added the definitions of the following terms to make them clearer or to consolidate the definitions at OAC 3745-31-01: "Clean coal technology demonstration project," "major modification," "modify" or "modification," "net emissions increase," and "temporary clean coal technology demonstration project." Because these amendments and additions clarify and reorganize the rule without changing any of the definitions, we find them approvable.

The submittals amended the definition of "potential to emit" (PTE) at OAC 3745-31-01 in order to allow emission limits that are practically and legally enforceable by the State to be used to restrict the potential to emit of a source. OEPA has made this clarifying change based on the Federal definition of PTE being stricken by the Court ruling in *National Mining Ass'n v. United States Environmental Protection Agency*, 59 F.3d 1351 (D.C. Cir. 1995). Because we have not reformulated a definition for PTE, and because OEPA's amendment here comports with our guidance, we find this requested amendment approvable. Future changes to the requested SIP revision's definition of PTE may become necessary if we reformulate our PTE policy in the future.

The SIP revision requests amended the definition of "modify or modification" at OAC 3745-31-01 as it applies to solid waste disposal facilities and infectious waste treatment facilities. The definition now requires a permit only for modifications that substantially increase the limits of solid waste placement horizontally or vertically, rather than for modifications that substantially change the depth of excavation, finished topography, or total capacity. We find this amendment approvable because it will reduce the number of permits issued for modifications that have no significant impact on air quality. Second, the definition of "modify or modification" now requires permits for a modification in waste handling, an increase in treatment capacity, or any other substantial change of an infectious waste treatment facility. Because this

revision request broadens the scope of the term “modify or modification” to include substantial changes at infectious waste treatment facilities, we find it approvable.

#### **F. Are OEPA's NSR Attainment Rules Now Approvable?**

Yes. OEPA's NSR attainment rules fulfill the requirements of the Clean Air Act with three exceptions: OEPA's rules do not include a 25 tons per year significance level for particulate matter; the 50 ton per year significance level for municipal solid waste landfill emissions as required by 40 CFR 51.166(b)(23)(I); and because total reduced sulfur and reduced sulfur compounds incorrectly exclude hydrogen sulfide. In a December 5, 2000, letter seeking comment on rule changes to OAC 3745-31, OEPA committed to correct the definition of significance in OAC 3745-31. Because OEPA's rules meet all of the requirements of 40 CFR 51.165 and 51.166 with these exceptions and OEPA has started the process to correct the deficiencies, it is appropriate to finalize the conditional approval. The conditional approval provides that if OEPA does not submit approvable changes within one year timeframe, we will disapprove OEPA's attainment rules.

#### **G. Are OEPA's Rules for Public Notice Procedure Approvable?**

Yes, because they fulfill the public participation requirements specified in Part C of Title I of the CAA, 40 CFR 51.165, and 40 CFR 51.166.

#### **H. What Comments Have the Public Submitted, and What Are EPA's Responses?**

In a June 21, 1996 letter, the Ohio Electric Utility Institute submitted two formal comments in response to our proposed conditional approval of Ohio's NSR program. Below are the comments and our responses.

*Comment:* “In [the April 22, 1996 proposed conditional approval 61 FR 17669], USEPA states that, because of certain definitional omissions, “Ohio has not given electric operating units the additional flexibility that the Federal rules would otherwise allow” (presumably under the so-called WEPCO rules, which are incorporated into the Federal New Source Review program). USEPA goes on to state: “On this point, the state [requirements are] more stringent than the federal requirements and, therefore, are approvable.” (See pages 17673-17674.) Regarding USEPA's contention that OEPA did not intend to incorporate the flexibility afforded by the WEPCO rules

as part of the Ohio New Source Review program, the Utilities have the following two comments.

“First, the mere absence of certain federal definitions from the submitted New Source Review rules cannot be construed as evidence of Ohio EPA's intent to adopt a more stringent federal program. On the contrary, Ohio EPA has had a consistent policy of implementing its New Source Review program to afford the maximum flexibility provided by Federal law. Ohio EPA has implemented its policy of maximum flexibility, even though Ohio New Source Review rules did not include many specific Federal definitions. For instance, although Ohio EPA regulations never specifically provided for a “netting” rule in order to avoid PSD [Prevention of Significant Deterioration] or nonattainment review, Ohio EPA has consistently implemented its New Source Review permitting program to allow sources to “net” out of PSD or nonattainment review. Ohio accomplished this important policy decision by relying on other parts of Ohio statutory law and regulatory provisions which required Ohio EPA to issue permits in accordance with Federal law. This practice of incorporating Federal flexibility “by reference” into the Ohio air pollution control laws is one that is well established in Ohio and well understood by the Region. Accordingly, it is inappropriate for USEPA to infer that certain definitional omissions reflect an intent by Ohio EPA to be more stringent than Federal law. The Utilities suggest that in any final action on these rules, USEPA delete any textual material which implies or suggests that Ohio EPA did not intend to allow maximum WEPCO flexibility.”

*Our response to this comment:* EPA's comment in the relevant proposed rule deals only with OEPA's rulemaking, and not the State's implementation policy. It is in the public interest to note whenever Ohio's SIP is more stringent or less stringent than Federal requirements. Neither the State's implementation history nor their opinion on WEPCO flexibility bear on EPA's evaluation that the SIP provisions are acceptable. No inference is made or intended in this action regarding OEPA's “intent.”

*Comment:* “As a second comment, the Utilities note that several other commentors (including the Ohio Chamber of Commerce and the Ohio Petroleum Council) have suggested that USEPA refrain from any final approval of the Ohio New Source Review rules until Ohio EPA is afforded time to submit technical conforming

amendments to the regulations which will clearly and explicitly refer to the WEPCO definitional requirements. The Utilities strongly support other Ohio industry groups on this point. Because of the vital importance of the WEPCO rule to the Utilities in Ohio, USEPA should take no final position that suggests such flexibility has been revoked. Rather, USEPA should allow Ohio EPA the time to submit the technical amendments necessary to conform the Ohio rules to the WEPCO definitions.”

*Our response to this comment:* We are obligated to act on OEPA's rule submittals as they are received unless OEPA requests a delay in action. OEPA has made no such request, nor have they stated any intention to submit technical amendments. Therefore, we are acting on the request as submitted by the State.

#### **I. What Is Today's Final Action?**

In this rule, EPA approves OEPA's March 1, 1996 request, as amended by OEPA's April 16, 1997 request, for additions and revisions to OAC 3745-31-01 to 3745-31-10, and OAC 3745-31-21 to 3745-31-27. EPA also approves OEPA's August 10, 1999 request for additions to OAC 3745-47-01, 3745-47-02, 3745-47-03, 3745-47-05, 3745-47-07 and 3745-47-08(D).

EPA is publishing this action without prior proposal because EPA views this action as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse or critical written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by March 25, 2002. Should EPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on April 22, 2002.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any State plan. Each request for revision to a State Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

#### **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. 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 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. section 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. section 804(2). This rule will be effective April 22, 2002.

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 April 22, 2002. 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).)

#### V. List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur Oxide, Volatile organic compounds.

Dated: December 6, 2001.

**Norman Niedergang,**

*Acting Regional Administrator, Region 5.*

For the reasons stated in the preamble, part 52, chapter I of 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.*

2. Section 52.1870 is amended by adding paragraph (c)(126) to read as follows:

#### § 52.1870 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(126) On March 1, 1996, Ohio submitted revisions to its Permit to Install rules as a revision to the State implementation plan. The request was supplemented on April 16, 1997, September 5, 1997, December 4, 1997, April 21, 1998, and August 19, 1999.

(i) *Incorporation by reference.*

(A) Ohio Administrative Code Rules 3745-31-01 through 3745-31-03, 3745-31-05, 3745-31-09, 3745-31-10, 3745-31-21 through 3745-31-27, effective April 12, 1996; 3745-31-04 and 3745-31-06, effective September 18, 1987; 3745-31-07 and 3745-31-08, effective August 15, 1982.

(B) Ohio Administrative Code Rules 3745-47-01, 3745-47-02, 3745-47-03, 3745-47-05, 3745-47-07 and 3745-47-08 (D), effective June 30, 1981.

[FR Doc. 02-3760 Filed 2-20-02; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[MN70-7295a; FRL-7136-4]

#### Approval and Promulgation of Implementation Plans; Minnesota

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency is approving a site-specific revision to the Minnesota Sulfur Dioxide (SO<sub>2</sub>) State Implementation Plan (SIP) for Koch Petroleum Group, LP (Koch). The Minnesota Pollution Control Agency (MPCA) submitted the SIP revision request on May 2, 2001. The request is approvable because it satisfies the requirements of the Clean Air Act (Act). The rationale for the