

Dated: May 21, 2004.

**Paul Hoffman,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 04-12054 Filed 5-26-04; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[IL222-1a; FRL-7666-1]

### Approval and Promulgation of Implementation Plans; Illinois

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency is approving a revision to the Illinois State Implementation Plan (SIP) for the Louis Berkman Company, doing business as the Swenson Spreader Company (Swenson). The Illinois Environmental Protection Agency (IEPA) requested on September 19, 2003, that EPA approve into the SIP an adjusted standard for the volatile organic material (VOM) content limit applicable to the painting operations at Swenson's plant located in Lindenwood, Ogle County, Illinois. EPA is approving this request because it satisfies the requirements of the Clean Air Act (Act).

**DATES:** This "direct final" rule is effective July 26, 2004, unless EPA receives written adverse comment by June 28, 2004. If written adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. IL-222, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *E-mail:* [bortzer.jay@epa.gov](mailto:bortzer.jay@epa.gov).

- *Fax:* (312) 886-5824.

- *Mail:* J. Elmer Bortzer, Chief, Criteria Pollutant Section, Air Programs Branch, United States Environmental Protection Agency, Mailcode AR-18J, 77 West Jackson Boulevard, Chicago, Illinois 60604. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.

- *Hand Delivery:* Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. IL-222. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://regulations.gov), or e-mail. The federal [regulations.gov](http://regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Unit I of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in an index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. The Docket Facility is open during normal business hours, Monday through Friday, excluding legal holidays. We recommend that you telephone Christos Panos at (312) 353-8328, before visiting the Region 5 office.

#### FOR FURTHER INFORMATION CONTACT:

Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch, United States

Environmental Protection Agency, Region 5, Mailcode AR-18J, 77 West Jackson Boulevard, Chicago, Illinois 60604; telephone number: (312) 353-8328; fax number: (312) 886-5824; e-mail address: [panos.christos@epa.gov](mailto:panos.christos@epa.gov).

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

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### I. General Information

#### A. Does This Action Apply to Me?

No, this action applies to a single source, the Louis Berkman Company, doing business as the Swenson Spreader Company, in Lindenwood, Ogle County, Illinois. This rulemaking action merely approves an adjusted State standard into the SIP, making it federally enforceable under the Act.

#### B. What Should I Consider As I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through [regulations.gov](http://regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

- ii. Follow directions—The Agency may ask you to respond to specific questions or organize comments by

referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Review of State Implementation Plan Revision

### 1. What Is EPA Approving?

We are approving into the Illinois SIP an adjusted standard for the emissions limit applicable to the painting operations at Swenson's plant located in Lindenwood, Ogle County, Illinois. Section 215.204(j)(2) of the Illinois Administrative Code establishes a limit for the miscellaneous metal parts and products category of 3.5 pounds of VOM<sup>1</sup> per gallon of coating (lbs VOM/gal) for air dried coating operations. The Illinois Pollution Control Board (IPCB) granted Swenson a ten year adjusted standard from section 215.204(j)(2) on May 7, 1998. Under the adjusted standard Swenson is limited to a monthly average of 4.75 lbs VOM/gal until May 7, 2008.

### 2. Why Did the State Revise Its Rules?

In the September 19, 2003 submission, IEPA requested that EPA approve revisions that are specific to Swenson's painting operations at its Lindenwood, Illinois plant. Swenson is an original equipment manufacturer of snow and ice control equipment. The primary purchaser of Swenson's products are federal, state, and local governmental agencies. Because many of these agencies specify the type of paint to use, the coatings Swenson uses to paint its products often have a VOM content greater than the state standard of 3.5 lb/gal.

### 3. What Is EPA's Analysis of the State's Submittal?

Swenson manufactures snow and ice removal equipment at its Lindenwood, Ogle County, Illinois plant. Ogle County is in attainment of the ozone National Ambient Air Quality Standards (NAAQS). Part of the manufacturing process includes applying one or more coatings of paint. Section 215.204 of the Illinois Administrative Code (35 Ill. Adm. Code) governs VOM emissions from manufacturing plants. Specifically, 35 Ill. Adm. Code Section 215.204(j)(2) applies to Swenson. According to that section, VOM emissions from air-dried miscellaneous metal parts and products coatings may not exceed 3.5 lb/gal. Manufacturers that emit less than 25 tons of VOM per year are exempt from this limitation. EPA approved 35 Ill. Adm. Code Section 215.204 into the Illinois SIP on January 15, 1999, at 64 FR 2581.

In its request for an adjusted standard, Swenson states that the primary purchaser of its products are governmental agencies which often specify the type of paints to use and/or coating thicknesses to achieve on the products they order. Many of these paints contain more than 3.5 lbs VOM/gal and, therefore, do not comply with 35 Ill. Adm. Code Section 215.204(j)(2). In addition, the size and shape of its products make relatively high solvent use necessary for proper adhesion characteristics and the specified coating thicknesses cannot be achieved with water-based coatings. Swenson's average annual VOM emissions were 31.8 tons between 1992 and 1996.

Swenson filed its motion for an adjusted standard with the IPCB on October 11, 1996. In its petition, Swenson requested a VOM limit of 5.25 lb/gal monthly average for the first year, and a VOM limit of 5.00 lb/gal monthly average for the second year and beyond following the adjusted standard approval. Swenson based the higher VOM limit for the first year on its existing stocks of VOM paint. Swenson noted in its petition that the 5.00lb/gal limit is more stringent than the relief IPCB granted to a number of other companies in the past. Swenson filed an amendment to its petition on May 16, 1997. In the amended petition Swenson requested a VOM limit of 5.00 lb/gal monthly average for the first year, and a VOM limit of 4.75 lb/gal monthly average for the second year and beyond, following the adjusted standard approval.

On February 21, 1997, IEPA submitted to IPCB a recommendation to deny Swenson's petition. IEPA

commented that Swenson failed to prove that it is unable to comply with the requirements of section 215.204(j). Two public hearings were held before the IPCB, the first on April 17, 1997, in Oregon, Illinois, and the second on May 21, 1997, in Springfield, Illinois. Evidence was provided at these hearings about the feasibility of different emission reduction methods, including the installation of an afterburner or a powder coating system, and reformulating the paints it uses. Swenson justified the adjusted standard based upon its own technical support demonstrating that the 3.5 lbs VOM/gal limit is technically and economically infeasible. Swenson asserted that the installation of emissions control equipment would impose an unreasonable financial hardship on the company without providing a measurable environmental benefit to the area, and that the area has not had an exceedance of the ozone NAAQS.

Further, Swenson states that coatings that satisfy customer requirements and comply with 35 Ill. Adm. Code Section 215.204(j)(2) are currently unavailable.

In a December 4, 1997, Interim Opinion and Order, IPCB granted Swenson an adjusted standard to use coatings that contain, on a monthly average, 4.75 lbs VOM/gal, and made the following findings of fact and conclusions of law:

(1) Coatings that comply with 35 Ill. Adm. Code Section 215.204(j)(2) are not available for Swenson's specialty orders;

(2) The cost that Swenson would incur to comply with regulatory alternatives to 35 Ill. Adm. Code Section 215.204(j)(2) are unreasonable;

(3) The factors are substantially and significantly different from those that IPCB considered when adopting 35 Ill. Adm. Code Section 215.204(j)(2);

(4) An adjusted standard will not result in environmental or health effects substantially and significantly more adverse than those considered by IPCB in adopting 35 Ill. Adm. Code Section 215.204(j)(2); and,

(5) An adjusted standard is consistent with applicable Federal law.

IPCB stated that the adjusted standard will expire ten years from the date of IPCB's final order, since compliant coatings may become available and Swenson's customers may not always require noncompliant coatings. Further, IPCB required Swenson to file a plan for demonstrating compliance with the adjusted standard.

In Swenson's February 3, 1998, Compliance Plan, Swenson identified the following operational initiatives: requesting from paint suppliers reformulated paints with lower VOM

<sup>1</sup> EPA generally uses the term "Volatile Organic Compounds (VOC)" to refer to volatile organic emissions. In Illinois' regulations, the State uses the term "Volatile Organic Material (VOM)" rather than VOC. The State's definition of VOM is equivalent to EPA's definition of VOC, and are interchangeable when discussing volatile organic emissions.

emissions; heating the paint lines to the spraying system and purchasing high efficiency electrostatic paint guns to lessen VOM emissions; and, recording all paint purchases and usage to track VOM emissions. To calculate the monthly average of VOM emissions, Swenson proposed to determine the total VOM in pounds delivered to the coating applicator each month and divide that amount by the number of coating gallons used that month. Swenson also identified that it is researching a single booth powder coating system to lower its VOM emissions while fulfilling its sales requirements.

On May 7, 1998, IPCB adopted a Final Opinion and Order, AS 97-5, granting the adjusted standard requested by Swenson. On June 12, 1998, IEPA filed a Motion to Reconsider the IPCB's Final Opinion and Order. The IPCB denied IEPA's motion on July 23, 1998. The IEPA filed an appeal of IPCB's July 23, 1998, order in the Second District Appellate Court of Illinois through the Illinois Attorney General Office. The Court affirmed IPCB's Final Opinions and Orders of May 7, 1998, and July 23, 1998, on November 19, 1999. IEPA formally submitted the adjusted standard for Swenson to EPA on September 19, 2003, as a site-specific revision to the Illinois SIP.

#### 4. Did Illinois Hold a Public Hearing?

Swenson filed a petition for an adjusted standard with the IPCB on October 11, 1996. Notice of the petition was published in the Ogle County Life on October 21, 1996. IEPA filed a response to Swenson's petition on February 26, 1997. Two public hearings were held before the IPCB, the first on April 17, 1997, in Oregon, Illinois, and the second on May 21, 1997, in Springfield, Illinois.

### III. EPA's Review of the SIP Revision

The EPA has identified VOM control levels that it presumes to constitute reasonably available control technology (RACT) for various categories of sources. However, case-by-case RACT determinations may be developed that differ from EPA's presumptive norm. The EPA will approve these RACT determinations as long as a demonstration is made that they satisfy the Act's RACT requirements based on adequate documentation of the economic and technical circumstances of the particular sources being regulated. To make this demonstration, it must be shown that the current SIP requirements do not represent RACT because pollution control technology necessary to reach the requirements is

not and cannot be expected to be reasonably available. The EPA will determine on a case-by-case basis whether this demonstration has been made, taking into account all the relevant facts and circumstances concerning each case. A demonstration must be made that reasonable efforts were taken to determine and adequately document the availability of complying coatings or other kinds of controls, as appropriate. If it is conclusively demonstrated that complying low-solvent coatings are unavailable, the EPA would consider an alternative RACT determination based on the lowest level of VOM control technically and economically feasible for the facility.

Based on the information and technical support IEPA provided in its submittal, the EPA finds that the SIP requirements are not technically or economically feasible for the Swenson Lindenwood facility, and that a limit of 4.75 lbs VOM/gal will not have a negative environmental impact in the area. Further, the adjusted standard will expire ten years from the date of IPCB's final order, since compliant coatings may become available and Swenson's customers may not always require noncompliant coatings. In its plan for demonstrating compliance with the adjusted standard Swenson identified the following operational initiatives: requesting from paint suppliers reformulated paints with lower VOM emissions; heating the paint lines to the spraying system and purchasing high efficiency electrostatic paint guns to lessen VOM emissions; and, recording all paint purchases and usage to track VOM emissions. Swenson also identified that it is researching a single booth powder coating system to lower its VOM emissions while fulfilling its sales requirements. As previously stated, Ogle County is in attainment of the ozone NAAQS. Approval of this requested SIP revision will not increase the historical VOM emission level from this source, and will not interfere with the maintenance of the ozone NAAQS in Ogle County. Therefore, EPA finds this SIP submittal approvable.

### IV. What Action Is EPA Taking?

EPA is approving into the Illinois SIP an adjusted standard for the VOM content limit applicable to the painting operations at Swenson's plant located in Lindenwood, Ogle County, Illinois. The State submitted this SIP revision on September 19, 2003. Under the adjusted standard Swenson is limited to a monthly average of 4.75 lbs VOM/gal until May 7, 2008.

EPA views the approval of this SIP revision as noncontroversial, and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing approval of the State Plan. Should adverse or critical written comments be filed, EPA will withdraw this direct final rule and address all public comments in a final rule based on the proposed rule published in the proposed rules section of this **Federal Register**. This approval action will be effective without further notice unless EPA receives relevant adverse written comment by June 28, 2004. Should EPA receive adverse or critical 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 July 26, 2004.

### V. Statutory and Executive Order Reviews

#### *Executive Order 12866: Regulatory Planning and Review*

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.

#### *Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

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).

#### *Regulatory Flexibility Act*

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.*).

#### *Unfunded Mandates Reform Act*

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).

*Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

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).

*Executive Order 13132: Federalism*

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.

*Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

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.

*National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

*Civil Justice Reform*

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.

*Governmental Interference With Constitutionally Protected Property Rights*

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, and has determined that the rule's requirements do not constitute a taking.

*Paperwork Reduction Act*

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.*).

*Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, EPA promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 July 26, 2004. 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 7, 2004.

**Bharat Mathur,**

*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 52.720 is amended by adding paragraph (c)(172) to read as follows:

**§ 52.720 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(172) On September 19, 2003, Illinois submitted a site-specific revision to the State Implementation Plan which relaxes the volatile organic material (VOM) content limit for the coating operations at Louis Berkman Company, d/b/a/ the Swenson Spreader Company's Lindenwood, Ogle County, Illinois facility from 3.5 pounds VOM per gallon to a monthly average of 4.75 pounds VOM per gallon until May 7, 2008.

(i) Incorporation by reference. Order contained in a May 7, 1998, Opinion and Order of the Illinois Pollution Control Board, AS 97-5, effective May 7, 1998.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 261**

[FRL-7667-5]

**Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion**

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

**ACTION:** Final rule.

**SUMMARY:** The EPA (also, "the Agency" or "we") in this preamble is granting a petition submitted by Bekaert Corporation (Bekaert) to exclude (or delist) a certain solid waste generated by its Dyersburg, Tennessee facility from