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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 172–1172a; FRL–7471–9]

Approval and Promulgation of Implementation Plans and Approval Under Sections 110 and 112(l); State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to approve a State Implementation Plan (SIP) revision submitted by the state of Kansas. This revision applies to small sources and creates a permit-by-rule that provides an alternative for certain small emission sources which otherwise would be required to apply for an operating permit. Small sources not operating at or above the threshold levels which trigger source-specific operating permit requirements are provided an option to operate under the conditions of this permit-by-rule in lieu of applying for the operating permit. The effect of this approval is to ensure Federal enforceability of the state air program rules and to maintain consistency between the state-adopted rules and the approved SIP.

DATES: This direct final rule will be effective May 27, 2003, unless EPA receives adverse comments by April 25, 2003. If adverse comments are 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: Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. Interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Approval Under Section 112(l)?

Section 112(l) of the CAA provides authority for EPA to delegate a program to regulate hazardous air pollutants (HAPs) to the states and local agencies. EPA has delegated authority for this program to Kansas and has approved the state's Class II rules as they pertain to HAPs under this authority.

What Is Being Addressed in This Document?

On October 4, 2002, Kansas made revisions to state rule K.A.R. 28–19–564; Class II Operating Permits; Permits-by-Rule; Operating Permits for Sources with Actual Emissions Less Than 50 Percent of Major Source Thresholds.

This rule creates a permit-by-rule that provides an alternative for certain small emission sources which otherwise would be required to apply for a full Class I (major source) or Class II (minor source) operating permit. Small sources which have emissions at 25 percent of the Class I or Class II threshold levels are required to notify the state of their desire to operate under this regulation and to maintain the required records. Small sources which have emissions at 50 percent of the threshold levels are required to apply to the state, pay the appropriate fee and maintain the required records. These provisions reduce the burden associated with the time and effort otherwise required to apply for and obtain a Class I or Class II operating permit.

The exemption is not available for sources which are subject to Title V operating permit requirements for reasons other that their potential to emit at major source levels (*e.g.*, 100 or more tons per year of a criteria pollutant). The exemption only relates to the operating permit program. It requires sources to continue to operate well below the levels which trigger the Class I or Class II permitting requirements and demonstrate, through appropriate

recordkeeping as specified in the rule, that they are operating within those levels. Any source which exceeds the 25 or 50 percent actual emissions level must apply for an appropriate operating permit based on potential emissions.

This regulation was adopted by the Kansas Department of Health and Environment on September 9, 2002, and became effective on October 4, 2002.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

EPA is approving as a revision to the Kansas SIP rule K.A.R. 28–19–564; Class II Operating Permits; Permits-by-Rule; Sources With Actual Emissions Less Than 50 Percent of Major Source Thresholds, which was submitted on December 19, 2002.

This rule is also being approved pursuant to section 112(l) of the CAA.

We are processing this action as a final action because it adds noncontroversial regulations to the SIP. We do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

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 (Public Law 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 CAA. 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 CAA. 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 CAA. 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.*).

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. 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 CAA, 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 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 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 13, 2003.

Nat Scurry,

Acting Regional Administrator, Region 7.

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 R—Kansas

2. In § 52.870 the table in paragraph (c) is amended by adding in numerical order an entry for ''K.A.R. 28–19–564'' under the table heading ''Class II Operating Permits.''

The addition reads as follows:

§ 52.870 Identification of plan.

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(c) * * *

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				
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Class II Operating Permits				
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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.	
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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