

approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

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

Regulatory Process

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 6, 1995.

Nora L. McGee,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (191)(i)(C) and (198)(i)(E) to read as follows:

52.220 Identification of plan.

* * * * *

(c) * * *

(191) * * *

(i) * * *

(C) San Bernardino County Air Pollution Control District.

(I) Rule 463, adopted on November 2, 1992.

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(198) * * *

(i) * * *

(E) Mojave Desert Air Quality Management District.

(I) Rules 461 and 462, adopted on May 25, 1994.

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BILLING CODE 6560-50-W

40 CFR Part 52

[WA25-1-6520a; FRL-5190-1]

Approval and Promulgation of Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) is approving in part, disapproving in part, and taking no action on the Regulations of the Southwest Air Pollution Control Authority (SWAPCA) for the control of air pollution in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum Counties, Washington, as revisions to the Washington State Implementation Plan (SIP). These Regulations were submitted by the Director of the Washington State Department of Ecology (WDOE) on April 11, 1994. In accordance with Washington statutes, SWAPCA rules must be at least as stringent as the WDOE statewide rules.

DATES: This action will be effective on July 3, 1995 unless adverse or critical comments are received by June 2, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air Programs Branch (AT-082), EPA, Docket # WA25-1-6520, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, EPA, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air Programs Branch, 1200 Sixth Avenue (AT-082), Seattle, Washington 98101, and Washington Department of Ecology, PO Box 47600, Olympia, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Kelly McFadden, Air Programs Branch (AT-082), EPA, Region 10, Seattle, Washington 98101, (206) 553-1059.

SUPPLEMENTARY INFORMATION:

I. Background

On April 11, 1994, the Director of WDOE submitted to EPA Region 10 regulations for SWAPCA affecting Clark, Cowlitz, Lewis, Skamania, and Wahkiakum Counties. SWAPCA and WDOE held joint public hearings on June 15, 1993 and September 21, 1993, to receive public comments on the revisions to SWAPCA's rules and the submittal to EPA as a revision to the Washington SIP.

SWAPCA requested that the WDOE submit these additions to EPA for incorporation into the Washington SIP.

II. Description of Plan Revisions

The SWAPCA amendments submitted by WDOE on April 11, 1994 for inclusion into the Washington SIP are local air pollution regulations which are at least as stringent as the statewide rules of the WDOE. EPA is approving in part, disapproving in part, and taking no action on the various portions of SWAPCA's submitted regulations. In this rulemaking, EPA is approving the following sections, except as noted, adopted by SWAPCA on September 21, 1993 under SWAPCA Regulation 400, General Regulations for Air Pollution Sources, as a revision to the Washington SIP:

- 400-010 Policy and Purpose
- 400-020 Applicability
- 400-030 Definitions, except the second sentences of (14) and (43)
- 400-040 General Standards for Maximum Emissions, except (1) (c) and (d), (2), (4), and the exception provision of (6)(a)
- 400-050 Emission Standards for Maximum Emissions, except the exception provision in (3)
- 400-052 Stack Sampling of Major Combustion Sources
- 400-060 Emission Standards for General Process Units
- 400-070 Emission Standards for Certain Source Categories, except (7)
- 400-081 Startup and Shutdown
- 400-090 Voluntary Limits on Emissions
- 400-100 Registration and Operating Permits, except the first sentence of (3) (a)(iv), (a)(v) and (5)
- 400-101 Sources Exempt From Registration Requirements
- 400-105 Records, Monitoring and Reporting
- 400-107 Excess Emissions
- 400-110 New Source Review
- 400-112 Requirements for New Sources in Nonattainment Area
- 400-113 Requirements for New Sources in Attainment or Nonclassifiable Areas

- 400-114 Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source
- 400-151 Retrofit Requirements for Visibility Protection
- 400-161 Compliance Schedules
- 400-171 Public Involvement
- 400-190 Requirements for Nonattainment Areas
- 400-200 Creditable Stack Height and Dispersion Techniques
- 400-205 Adjustment for Atmospheric Conditions
- 400-210 Emission Requirements of Prior Jurisdiction
- 400-220 Requirements for Board Members
- 400-230 Regulatory Actions
- 400-240 Criminal Penalties
- 400-250 Appeals
- 400-260 Conflict of Interest

The following discussion of sections in SWAPCA Regulation 400, explains which sections EPA is approving, disapproving, or taking no action on. The following actions are being approved unless exceptions are noted:

Section 010—Policy and Purpose, explains SWAPCA's goals and policies. Section 020—Applicability, explains over what sources and area SWAPCA's regulations apply. EPA finds that Section 030—Definitions, are consistent with the requirements of 40 CFR Part 51, Subpart I, however the second sentences of definitions (14) Class I area and (43) Mandatory Class I area are not being acted on as they may create a future conflict if a SWAPCA source is found to affect a Class I area that is not listed. Section 030 Definition (78) SIP shall be approved as its changed to read “* * * and approved by EPA” rather than “* * * and submitted to EPA for approval”. Section 040—General Standards for Maximum Emissions, details the maximum emissions allowed within SWAPCA's jurisdiction for those emission units emitting criteria pollutants and that are not more specifically controlled by SWAPCA Sections 050 through 075. Section 040(1) (c) and (d) are being disapproved due to their allowance for the establishment of alternative opacity limits. EPA is also disapproving the exception provision of Section 040(6)(a) which provides an exception to the sulfur dioxide emission limitation. EPA is taking no action on Section 040(2) Fallout and Section 40(4) Odors as these provisions are not related to the criteria pollutants regulated under the SIP. Section 050—Emission Standards for Combustion and Incineration Units, contains more specific requirements

than Section 040, and is included for those emission units that incinerate or combust as part of their operation process, but the exception provision in paragraph (3) allows for the establishment of an alternative oxygen correction factor for combustion and incineration sources and is therefore being disapproved. Section 052—Stack Sampling of Major Combustion Sources, contains requirements for particular sources to monitor or conduct emissions testing in order to prove compliance for their applicable pollutants. Section 060—Emission Standards for General Process Units, explains the maximum particulate matter permitted for those process units not specifically covered in SWAPCA Sections 050 through 075 and references the procedures that may be used to determine source compliance. EPA is approving Section 070—Emission Standards for Certain Source Categories except for subsection (7)—Sulfuric Acid Plants, where no action is taken as it is not related to the criteria pollutants regulated under the SIP. No action is being taken on Section 075—Emission Standard for Sources Emitting Hazardous Air Pollutants because it has no relation to the criteria pollutants that are regulated under the SIP. Section 081—Startup and Shutdown, establishes a requirement that State and local air pollution control authorities consider any physical constraints on the ability of a source to comply with a standard whenever an authority promulgates a technology-based emission standard or makes a control technology determination. Where the authority determines that the source is not capable of achieving continuous compliance with a standard during startup or shutdown, the authority shall establish appropriate limitations to regulate the performance of the source during startup or shutdown conditions. Section 090—Voluntary Limits on Emissions, provides a mechanism for the owner or operator of a source to apply for, and obtain, enforceable conditions that limit the source's potential to emit. Section 100—Registration and Operating Permits, explains those sources that need to register with SWAPCA for operation. The portions that are not being acted on eliminate the requirement for operating program sources to pay a fee due to EPA's approval of SWAPCA's Operating Permit Program. Section 101—Sources Exempt From Registration Requirements, lists the emissions units that are exempt from registration with the Authority and the requirement to maintain sufficient documentation to prove such. Section 105—Records,

Monitoring and Reporting, explains the steps that notified sources must follow in order to comply with the applicable emission limitations and control measures required by SWAPCA. Section 107—Excess Emission, establishes requirements for reporting periods of excess emissions and the procedures and criteria for determining, in the context of an enforcement action, when such excess emissions are unavoidable and could therefore be excused and not subject to penalty. Section 110—New Source Review, includes the procedures for submittal of applications, making completeness determinations and final determinations, and appeals of orders of approval. Section 112—Requirements for New Sources in Nonattainment Areas, specifies the requirements for new and modified major and minor stationary sources proposing to locate in designated nonattainment areas. Section 113—Requirements for New Sources in Attainment or Nonclassifiable Areas, specifies the requirements for new and modified major and minor stationary sources located in attainment areas. Section 114—Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source, explains the procedure that is to be followed when replacing or altering the emission control technology on an existing stationary source. EPA is taking no action on Section 115—Standards of Performance for New Sources, as this provision is not related to the criteria pollutants regulated under the SIP. EPA is disapproving the following: Section 120 Bubble Rules, Section 130 Acquisition and Use of Emission Reduction Credits, Section 131 Issuance of Emission Reduction Credits, and Section 136 Use of Emission Reduction Credits; as these regulations do not comply with the requirements of EPA's Final Emissions Trading Policy Statement (51 FR 43814) for source-specific alternative emission limits (bubbles) and creditable emission reductions for new source permitting. Section 141—Prevention of Significant Deterioration (PSD) is being disapproved as it does not meet the requirements of 40 CFR 51.166. Section 151—Retrofit Requirements for Visibility Protection, requires sources that may cause or contribute to impairment of visibility by emitting more than 250 tons/yr of any contaminant and affecting any mandatory Class I area to apply technology to reduce that impairment. Section 161—Compliance Schedules, allows SWAPCA to issue a schedule to sources violating an emission standard,

or another provision of regulation 400, which will bring the source into compliance within a specified period of time. Section 171—Public Involvement, lists which types of application or other actions require public notice, and what constitutes public notice. The inclusion of Section 172—Technical Advisory Council, is not a requirement of the Clean Air Act, and does not directly apply to the regulation of the criteria pollutants, and thus is not being acted for inclusion into the SIP. Section 180—Variance, is being disapproved because it allows SWAPCA to grant a variance to the requirements governing the quality, nature, duration, or extent of discharges of air contaminants. Section 190—Requirements for Nonattainment Areas, requires consultation with local government and public involvement. Section 200—Credible Stack Height and Dispersion Techniques, explains how to determine a source's credible stack height. Section 205—Adjustment for Atmospheric Conditions, prohibits varying the emissions rate in response to the varying atmospheric conditions. Section 210—Emission Requirements of Prior Jurisdictions, requires that the more stringent standards apply when jurisdiction is transferred. Section 220—Requirements for Board Members, prohibits Board members from administering enforcement programs in which a significant portion of their income is derived. Section 230—Regulatory Actions, explains the enforcement actions to be taken by SWAPCA when its regulations have not been followed. Section 240—Criminal Penalties, subjects violators of SWAPCA's regulations to the provisions of RCW 70.94.430. Section 250—Appeals, explains who appeals may be made to and under what circumstances. Section 260—Conflict of Interest, explains that all board members and officials that vote on air pollution sources must comply with the Federal Clean Air Act.

SWAPCA's regulations are similar to the state of Washington's WAC 173-400, and therefore if a more detailed explanation of the approvals/disapprovals is wanted, one should refer to the January 15, 1993 (58 FR 4578) **Federal Register** notice.

III. Summary of EPA Action

EPA is approving the following sections, with the following exceptions, of SWAPCA 400—General Regulation for Air Pollution Sources: 010; 020; 030 except the second sentences of (14) and (43); 040 except (1)(c) and (1)(d) (2) (4) and the exception provision of (6)(a); 050 except the exception provision of (3); 052; 060; 070 except (7); 081; 090;

100 except the first sentence of (3)(a)(iv) and (5); 101; 105; 107; 110; 112; 113; 114; 151; 161; 171; 190; 200; 205; 210; 220; 230; 240; 250; and 260.

EPA is disapproving the following sections: 040(1) (c) and (d); the exception provision of 040(6)(a); the exception provision in 050(3); 120; 130; 131; 136; 141; and 180.

EPA is taking no action on the following sections: the second sentence of 030 (14) and (43); 040(2); 040(4); 070(7); 075; the first sentence of 100(3)(a)(iv); 100(3)(a)(v); 100(5); 115; and 172.

IV. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 3, 1995 unless, by June 2, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this

action serving as a proposed rule. The EPA will not institute a second comment period on this action. 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 July 3, 1995.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

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

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 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 July 3, 1995. 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), 42 U.S.C. 7607(b)(2).)

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: March 30, 1995.

Chuck Clarke,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(51) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(51) On April 11, 1994 the Washington Department of Ecology (WDOE) submitted the Southwest Air Pollution Control Authority (SWAPCA) 400 General Regulations for Air Pollution Sources as a revision to the Washington State Implementation Plan (SIP).

(i) Incorporation by reference.

(A) April 11, 1994 letter from the Director of WDOE to EPA Region 10 submitting the Southwest Air Pollution Control Authority SWAPCA 400 Regulation, General Regulations for Air Pollution Sources.

(B) Regulations of the Southwest Air Pollution Control Authority—Sections 010; 020; 030 except the second sentences of (14) and (43); 040 except (1)(c) and (1)(d) (2) (4) and the exception provision of (6)(a); 050 except the exception provision of (3); 052; 060; 070 except (7); 081; 090; 100 except the first sentence of (3)(a)(iv) and (5); 101; 105; 107; 110; 112; 113; 114; 151; 161; 171; 190; 200; 205; 210; 220; 230; 240; 250; and 260, effective on November 8, 1993.

[FR Doc. 95-10812 Filed 5-2-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[IL107-1-6708a; FRL-5190-4]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA approves the Illinois, September 26, 1994, State Implementation Plan (SIP) revision request which grants a variance to J.M. Sweeney Co. (Sweeney) from Stage II vapor recovery requirements from

November 1, 1993, until March 31, 1995. This variance has been granted because Sweeney has demonstrated that immediate compliance with the requirements at issue would impose an arbitrary and unreasonable hardship. USEPA made a finding of completeness on the SIP submittal on October 28, 1994. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this action, USEPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. Please be aware that USEPA will institute another rulemaking notice on this action only if warranted by significant revision to the rulemaking based on any comments received in response to today's action. Parties interested in commenting on this action should do so at this time.

DATES: This action will be effective July 3, 1995 unless an adverse comment is received by June 2, 1995. If the effective date of this action is delayed due to adverse comments, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the Illinois submittal are available for public review during normal business hours, between 8:00 a.m. and 4:30 p.m., at the above address. A copy of this SIP revision is also available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), Room 1500, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mark J. Palermo, Regulation Development Section, Regulation Development Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886-6082.

SUPPLEMENTARY INFORMATION: On January 12, 1993, USEPA approved Illinois's Stage II vapor recovery rules (35 Ill. Adm. Code 218) as a revision to the Illinois SIP for ozone, applicable to the Chicago ozone nonattainment area (Cook, DuPage, Kane, Lake, McHenry, Will Counties and Aux Sable and Goose Lake Townships in Grundy County and

Oswego Township in Kendall County). These regulations satisfy section 182(b)(3) of the Clean Air Act as amended in 1990, which requires certain ozone nonattainment areas to require specified gasoline dispensing facilities to install and operate Stage II vapor recovery equipment. Stage II vapor recovery systems are designed to control and capture at least 95 percent of the Volatile Organic Compound (VOC) vapors emitted during the refueling of motor vehicles. Among these Stage II requirements is the provision that certain gasoline dispensing facilities, such as Sweeney's facility in Cicero, Illinois, must install Stage II vapor recovery equipment no later than November 1, 1993.

Sweeney contends that it had initiated efforts to achieve compliance by the November 1, 1993 compliance date. Among these efforts was a site evaluation conducted by a geophysical consulting firm. On August 30, 1993, the consulting firm informed Sweeney that petroleum contamination likely occurred at the site. On August 31, 1993, Sweeney notified the Illinois Emergency Management Agency (IEMA) of the suspected contamination and of the likely need for remediation. Subsequent on-site sampling confirmed that remediation is necessary and that it will require removal of both soil and some of the tanks. Installing Stage II equipment before the completion of the remediation would require that some of the Stage II equipment would have to be dismantled and removed during the remediation, which, according to Sweeney and the Illinois Environmental Protection Agency, would cost Sweeney an additional \$50,000 to \$60,000. As of July 14, 1994, the full areal extent of the contamination was yet to be identified, pending Sweeney's ability to gain access to off-site sampling locations.

On December 17, 1993, Sweeney filed a petition with the Illinois Pollution Control Board (IPCB) requesting a variance from meeting the November 1, 1993, compliance date on the grounds that requiring installation of the Stage II vapor recovery equipment prior to remediation would cause an unreasonable financial hardship. The IPCB is charged under the Illinois Environmental Protection Act with the responsibility of granting variance from regulations issued by the Board whenever it is found that compliance with the regulations would impose an arbitrary or unreasonable hardship upon the petitioner for the variance.

On September 1, 1994, the IPCB granted the variance extending Stage II compliance for Sweeney until March 31, 1995. Given both the high additional