

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

cost associated with installing and dismantling Stage II equipment before the remediation is completed and the low environmental impact occasioned by temporary noncompliance before March 31, 1995, the IPCB found that requiring Sweeney to have installed Stage II equipment by November 1, 1993, does constitute an unreasonable hardship. Illinois submitted this variance as a revision to the Illinois ozone SIP on September 26, 1994.

Final Rulemaking Action

The USEPA is approving this SIP revision on the basis that the uncontrolled emissions generated by Sweeney as a result of the variance will not contribute significantly to ozone formation, given that the variance will expire on March 31, 1995, before the onset of the ozone season which is April 1.

The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial amendment and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a "proposed approval" of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The "direct final" approval shall be effective on July 3, 1995, unless adverse or critical comments are received by June 2, 1995.

If USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw the approval before its effective date by publishing a subsequent rule that withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking notice. 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.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises that this action will be effective July 3, 1995.

This action has been classified as a Table 3 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 Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

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 any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA 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, USEPA may certify that the rule will not have a significant economic 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.

The SIP approvals under section 110 and subchapter I, part D, of the Act 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 small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976).

Under section 307(b)(1) of the 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 purpose 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, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: March 29, 1995.

Valdas V. Adamkus,
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 O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(110) to read as follows:

§ 52.720 Identification of plan.

(c) * * *

(110) On September 26, 1994, the State of Illinois submitted a revision to its ozone State Implementation Plan for the J. M. Sweeney Company located in Cicero, Cook County, Illinois. It grants a compliance date extension from Stage II vapor control requirements (35 Ill. Adm. Code 218.586) from November 1, 1993, to March 31, 1995.

(i) *Incorporation by reference.*

(A) Illinois Pollution Control Board Final Opinion and Order, PCB 93-257, adopted on September 1, 1994, and effective on September 1, 1994. Certification dated 9/23/94 of Acceptance by J. M. Sweeney.

[FR Doc. 95-10819 Filed 5-2-95; 8:45 am]

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40 CFR Part 52

[DE-16-1-5887a, DE20-1-6548a; FRL-5180-5]

Approval and Promulgation of Air Quality Implementation Plans; Delaware: Regulation 24—Control of Volatile Organic Compound Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware on January 11, 1993 and January 20, 1994. The revision pertains to Delaware Regulation 24—"Control of Volatile Organic Compound Emissions", sections 1 to 9, 13 to 35, 37 to 43, and Appendices A to H. These sections of Regulation 24 establish emission standards that represent the application of reasonably available control technology (RACT) to categories of stationary sources of volatile organic compounds (VOCs), and establish associated testing, monitoring, recordkeeping, compliance certification, and permit requirements. This revision was submitted to comply with the RACT "Catch-up" provisions of the Clean Air Act Amendments of 1990 (CAAA). This action is being taken