

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

2. Section 52.920, is amended by adding paragraph (c)(78) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(78) Operating Permit requiring VOC RACT for Calgon Corporation in the Kentucky portion of the Ashland/Huntington ozone nonattainment area, submitted November 11, 1994.

(i) Incorporation by reference. Natural Resources and Environmental Protection Cabinet; Kentucky Department for Environmental Protection; Division for Air Quality; Permit 0-94-020; Calgon Carbon Corporation, effective on November 17, 1994.

(ii) Other material. Letter of November 23, 1994, from the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet.

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40 CFR Part 52

[MN30-1-6215a; FRL-5183-8]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Minnesota submitted a revision intended to simplify and update the rules in its State Implementation Plan (SIP). These revisions included deleting regulations that are redundant with Federal New Source Performance Standards (NSPS) regulations, removing odor regulations and other similar regulations from the SIP, and recodifying the regulations. In the case of open burning, the State requested removal of the regulations from the SIP or, in the alternative, replacing these regulations with statutes that regulate open burning. USEPA is replacing the open burning regulations in the SIP with the new statutes and is approving all other revisions requested by the State.

EFFECTIVE DATE: This action will be effective July 24, 1995 unless adverse or critical comments are received by June 23, 1995. If the effective date is delayed,

timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE-17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request and U.S. EPA's analysis are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE-17J), Chicago, Illinois 60604; and Jerry Kurtzweg (6102), United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Air Enforcement Branch, Regulation Development Section (AE-17J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-6067.

SUPPLEMENTARY INFORMATION:**I. Review of State Submittal**

On November 23, 1993, the Minnesota Pollution Control Agency (MPCA) submitted a request to (1) eliminate a number of regulations that need not be included in the Minnesota State Implementation Plan (SIP), (2) recodify the remaining regulations, and (3) make miscellaneous other changes. Each of these types of revisions are discussed in separate sections below.

Elimination of Regulations

MPCA recommended elimination of several categories of regulations from the SIP. The category with the most regulations recommended for elimination are regulations that repeat the requirements for new sources established by the United States Environmental Protection Agency (USEPA) in various New Source Performance Standards (NSPS). Some of these regulations also govern emissions from "existing sources," i.e. sources that existed before the effective date of or otherwise not subject to a relevant NSPS. Most of these regulations were submitted in 1981. In its 1982 rulemaking on these regulations, USEPA approved these regulations only for "existing sources," reflecting concern that these regulations would either be unnecessary by virtue of being redundant with Federal NSPS or be detrimental by virtue of causing uncertainty as to which of conflicting State versus Federal provisions apply. In this context, "existing sources"

should be considered not only to include sources that existed prior to the effective date of the NSPS but also to include sources that are newer but are not subject to the NSPS due to size or other reasons.

Minnesota's submittal refines the list of rules which, by USEPA's approach, should be removed from the SIP or applied only to "existing sources." In the cases of regulations for portland cement plants, asphalt concrete plants, grain elevators, sulfuric acid plants, and nitric acid plants, the State has specified which portions of the relevant sets of rules regulate new sources and which portions regulate existing sources. In the cases of regulations for lead smelters and brass and bronze plants, there are no existing brass or bronze plants and the only existing lead smelter is subject to a separate more stringent administrative order in the SIP. Therefore, the regulations apply only to new sources and should be eliminated from the SIP in their entirety. In the cases of regulations for incinerators and sewage sludge incinerators, MPCA does not identify portions of the rules that only apply to new sources but comments that USEPA should state that the SIP only includes these rules as they apply to existing sources (which again may include newly constructed sources that are not subject to NSPS). USEPA concurs with Minnesota's list of which of these rules should be removed from the SIP, and is modifying the SIP accordingly.

A second set of regulations recommended for elimination concern odors and acid/base fallout. MPCA's submittal states that these regulations were not intended for purposes of achieving air quality standards or other Clean Air Act purposes and remain unnecessary for such purposes. Specifically, Minnesota requests on this basis that USEPA delete the set of regulations entitled Ambient Odor Control, the set entitled Limits for Animal Matter Odors, and the set entitled Limits on Acid, Base Emissions. These regulations were adopted around 1970 and were submitted and approved as part of a package that included all extant air pollution regulations. USEPA concurs with Minnesota's request and is removing these regulations from the SIP.

A third set of regulations recommended for elimination concern indirect sources. These regulations establish permitting requirements for the facilities such as highways, shopping malls, and airports that attract motor vehicles and thus indirectly cause mobile source emissions. These regulations were submitted in 1981 and approved by USEPA in 1982.

Nevertheless, section 110(a)(5)(A)(iii) of the Clean Air Act (added in 1977) states that "Any State may * * * suspend or revoke any [indirect source review program], provided the [implementation plan] meets the requirements of [section 110]." Minnesota is maintaining these regulations as State enforceable requirements, and will continue to implement indirect source review, but the State is seeking to remove these regulations from the federally enforceable SIP. The SIP has been found to meet the requirements of Section 110, and so the criteria in section 110(a)(5)(A)(iii) for removal of the indirect source regulations from Minnesota's SIP have been satisfied. Consequently, USEPA is removing these regulations from the SIP.

A final set of regulations recommended for elimination concern open burning. MPCA explained that the Minnesota Legislature rescinded these air pollution regulations and incorporated similar restrictions into legislation administered by the Minnesota Department of Natural Resources (DNR). MPCA argued that particulate matter emitted from open burning was not found to be significant in the State's development of plans to address the nonattainment areas, and argued that these regulations may be considered to be nuisance regulations rather than particulate matter regulations. Nevertheless, MPCA's submittal states "If the EPA does not approve the MPCA's request to remove the open burning program from the SIP, then the MPCA requests that the applicable portions of [the current statute that addresses open burning] be incorporated as part of Minnesota's SIP * * *."

Minnesota's open burning regulations generally prohibit open burning of leaves and other vegetative material, with exemptions for campfires and cooking and exemptions for certain types of burning which may be conducted upon receipt of a permit. Open burning causes emissions most notably of particulate matter and also of carbon monoxide, hydrocarbons, and air toxicants. MPCA has not attempted to analyze the ambient impact of eliminating these restrictions. Available evidence is limited but suggests that the impacts of open burning can be significant. Therefore, absent evidence to the contrary, USEPA finds that open burning should be retained as part of the Minnesota SIP. USEPA further finds that the alternative of revising the SIP by replacing the old regulations with the new statute is fully appropriate. The statute provides essentially the same or better air quality benefits insofar as it

provides for more effective administration of similar restrictions. This alternative would remove the open burning program from "MPCA's regulatory program," as requested by MPCA. (This portion of the SIP would be administered by the Minnesota DNR.) Although Minnesota planned in any case to continue the open burning restrictions in force, this alternative would retain these restrictions as part of the Federal SIP, thereby retaining Federal authority to object should the State subsequently wish to end the restrictions. Therefore, USEPA is approving Minnesota's alternative of replacing MPCA regulations with State statutes.

Recodification

MPCA requested that USEPA renumber the rules in the SIP to be consistent with the State's current numbering system. This renumbering itself would not change any of the substance of the requirements included in these rules. USEPA approves this renumbering, to make the SIP consistent with current State rule numbering.

Other Revisions

The most significant other revisions requested by MPCA concern the definitions given in Rule 7005.0100. All of the definitions requested by MPCA are acceptable. However, rulemaking on these revisions is complicated by the interrelationship with other rulemakings on Rule 7005.0100. In USEPA's rulemaking on a prior recodification request (published March 23, 1993, at 58 FR 15433), USEPA chose not to approve post-1985 revisions to Rule 7005.0100 due to their significance to permitting rules which were still under review. Recent rulemaking on a subsequent set of permitting rules approved selected revisions to this rule. Consequently, this submittal includes only a small number of definitions that differ from definitions that have already been approved. Nevertheless, for convenience, USEPA is approving the full set of definitions in Rule 7005.0100 as submitted by MPCA. (Note that Subpart 25a, defining "National Emissions Standards for Hazardous Air Pollutant," was excluded from MPCA's submittal and is therefore excluded from the approved SIP.)

A further significant revision included in MPCA's recodification submittal is an enhancement of requirements for sources to report emissions. (These provisions do not address the requirements in amended section 114 of the Clean Air Act for enhanced compliance monitoring.) USEPA approves this revision, which

would replace Rule 7005.1870 (4) with Rules 7019.3000 and 7019.3010.

Rulemaking Action

USEPA is making various revisions in accordance with Minnesota's request. USEPA is recodifying the SIP to reflect the new Minnesota rule numbering. In addition, this action (1) replaces the open burning regulations with the current statutory provisions (rather than removing the restrictions altogether), (2) modifies the delineation of new source limits that are excluded from the SIP, (3) removes the odor regulations and indirect source regulations from the SIP, (4) incorporates the enhanced emission reporting regulations, and (5) makes various other minor revisions requested by MPCA. The codification of this rulemaking delineates the revised SIP. The specific regulations that are revised by this action are discussed in detail in the technical support document for this rulemaking.

This action is being taken without prior proposal because the changes are believed to be noncontroversial and USEPA anticipates no significant comments on them. This action will be effective July 24, 1995 unless adverse or critical comments are received by June 23, 1995.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP 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 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 OMB has exempted this regulatory action from Executive Order 12866 review.

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 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 USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(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 [60 days from the date of publication]. 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, New source review, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

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

Dated: March 20, 1995.

David A. Ullrich,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

2. Section 52.1220 is amended by adding paragraph (c)(40) to read as follows:

§ 52.1220 Identification of plan.

* * * * *
(c) * * *

(40) On November 23, 1993, the State of Minnesota requested recodification of the regulations in its State Implementation Plan, requested removal of various regulations, and submitted recodified regulations containing minor revisions.

(i) Incorporation by reference.

(A) Minnesota regulations in Chapters 7005, 7007, 7009, 7011, 7017, 7019, and 7023, effective October 18, 1993.

(B) Submitted portions of Minnesota Statutes Sections 17.135, 88.01, 88.02, 88.03, 88.16, 88.17, and 88.171, effective 1993.

3. Section 52.1222 is revised to read as follows:

§ 52.1222 EPA-approved Minnesota State regulations.

The following table identifies the State regulations submitted to and approved by EPA as revisions to the Minnesota State Implementation Plan (SIP). This table is for informational purposes only and does not have any independent regulatory effect. This table also does not include administrative orders that have been approved into the SIP. To determine regulatory requirements for a specific situation consult the plan identified in § 52.1220. To the extent that this table conflicts with § 52.1220, § 52.1220 governs.

TABLE 52.1222.—EPA APPROVED REGULATIONS

Rule description	Minnesota rule numbers	Contents of SIP	Effective date	Relevant ¶s in § 52.1220 ¹
Definitions and Abbreviations	7005.0100-.0110	Full rules except def'n of NESHAP.	10/18/93	b,c20,c40.
Air Emission Permits	7007.0050-.1850	Full rules	8/10/93	b,c3,c5, c24,c26,c39.
Offsets	7007.4000-.4030	Full rules	10/18/93	c33.
Ambient Air Quality Standards ...	7009.0010-.0080	All except 7009.0030 and 7009.0040.	10/18/93	b,c3,c26.
Air Pollution Episodes	7009.1000-.1110	Full rules	10/18/93	c1,c21.
Applicability	7011.0010, .0020	Full rules	10/18/93	b,c20
Opacity	7011.0100-.0120	All except 7011.0120	10/18/93	b,c3,c20.
Fugitive Particulate	7011.0150	Full rules	10/18/93	b.
Indirect Heating Equipment	7011.0500-.0550	Full rules	10/18/93	b,c3,c20,c21
Direct Heating Equipment	7011.0600-.0620	Full rules	10/18/93	c20,c21.
Industrial Process Equipment	7011.0700-.0735	Full rules	10/18/93	b,c20
Portland Cement Plants	7011.0800-.0825	All except 7011.0810	10/18/93	c20,c40.
Asphalt Concrete Plants	7011.0900-.0920	All except 7011.0910	10/18/93	c20,c40.
Grain Elevators	7011.1000-.1015	All except 7011.1005(2)	10/18/93	c20,c25,c40.
Coal Handling Facilities	7011.1100-.1140	All except 7011.1130	10/18/93	c21.
Incinerators	7011.1201-.1207	All rules for "existing sources" ² .	10/18/93	b,c20,c40.
Sewage Sludge Incinerators	7011.1300-.1325	All rules for "existing sources" ...	10/18/93	c20,c40
Petroleum Refineries	7011.1400-.1430	All rules for "existing sources" ...	10/18/93	c20,c21.
Liquid Petroleum and VOC Storage Vessels.	7011.1500-.1515	All rules for "existing sources" ...	10/18/93	b,c21.
Sulfuric Acid Plants	7011.1600-.1630	All except 7011.1610	10/18/93	b,c3,c21,c40
Nitric Acid Plants	7011.1700-.1725	All except 7011.1710	10/18/93	b,c3,c21,c40.
Inorganic Fibrous Materials	7011.2100-.2105	All rules	10/18/93	c20.
Stationary Internal Combustion Engine.	7011.2300	Entire rule	10/18/93	b,c21.
CEMS	7017.1000	Entire Rule	10/18/93	c20.
Performance Tests	7017.2000	Entire Rule	10/18/93	c20.
Notifications	7019.1000	Entire Rule	10/18/93	c20.
Reports	7019.2000	Entire Rule	10/18/93	c20.
Emission Inventory	7019.3000, .3010	All rules	10/18/93	c20,c40.

TABLE 52.1222.—EPA APPROVED REGULATIONS—Continued

Rule description	Minnesota rule numbers	Contents of SIP	Effective date	Relevant ¶s in § 52.1220 ¹
Motor Vehicles Open Burning	7023.0100–0120 Portions of Chapter 17 and 88 of MN Statutes.	All rules All submitted portions of Sections 17.135, 88.01, 88.02, 88.03, 88.16, 88.17, and 88.171.	10/18/93 1993	b,c21. b,c21,c26, c40.

¹ Recodifications affect essentially all rules but are shown only for substantively revised rules.
² "Existing" sources are sources other than those subject to a new source performance standard.

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 BILLING CODE 6560–50–P

40 CFR Part 180

[PP 3F4233/R2134; FRL–4953–9]

RIN 2070–AB78

Bromoxynil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a time-limited tolerance, to expire on April 1, 1997, for residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzotrile) resulting from the application of its octanoic and heptanoic acid esters in or on the raw agricultural commodity (RAC) cottonseed (transgenic BXN varieties only) at 0.04 part per million (ppm). Rhone-Poulenc AG Co. submitted petitions requesting EPA to establish the maximum permissible residue of the herbicide in or on the RAC.

EFFECTIVE DATE: This regulation becomes effective May 24, 1995.

ADDRESSES: Written objections, identified by the document control number, [PP 3F4233/R2134], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP

(Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and requests for hearings filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies and requests for hearings must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and requests for hearings will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and requests for hearings in electronic form must be identified by the docket number [PP 3F4233/R2134]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and requests for hearings on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–6800; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 29, 1995 (60 FR 16111), EPA issued a proposed rule that gave notice that the Rhone-Poulenc AG Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide petition, PP 3F4233, to EPA proposing to amend 40 CFR 180.324 by establishing a regulation to permit residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzotrile) resulting from the application of its octanoic and heptanoic acid esters in or on the raw agricultural commodity (RAC) transgenic cottonseed at 0.04 ppm. There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The tolerance will expire on April 1, 1997. Based upon the evaluation of a mouse carcinogenicity study currently under review and submission of an analytical method, residue data, and livestock metabolism study on the metabolite, the Agency will determine whether establishing permanent tolerances is appropriate. Residues remaining in or on the raw agricultural commodity after expiration of this tolerance will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the conditional registration.

There were no negative comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the time-limited tolerance will protect the public health. Therefore, the time-limited tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: