

Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347-3555, extension 4150. Reference file TN-146-1-7039.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 23, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95-18517 Filed 7-27-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[NC-062-1-6430b; NC-067-1-6633b; NC-068-1-6632b; FRL-5254-7]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Revisions to State of North Carolina's State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of North Carolina, the Western North Carolina Air Pollution Control District, and the Forsyth County Department of Environmental Affairs for the purpose of allowing the State and two local agencies the ability to issue Federally enforceable state operating permit programs (FESOP) and Federally enforceable local operating permits (FELOP). In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by August 28, 1995.

ADDRESSES: Written comments should be addressed to Scott Miller of the EPA Regional office listed below.

Copies of the material submitted by the State of North Carolina may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

North Carolina Department of Environment, Health, and Natural Resources, P.O. Box 29535, Raleigh, North Carolina 27626.

FOR FURTHER INFORMATION CONTACT:

Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347-3555 ext. 4153.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 23, 1995.

William A. Waldrop,

Acting Regional Administrator.

[FR Doc. 95-18524 Filed 7-27-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[NC-065-1-6431b; FRL-5226-8]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Revisions Mecklenburg County Portion of the State of North Carolina's State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Mecklenburg County Department of Environmental Protection through the North Carolina Department of Health, Environment, and Natural Resources (DEHNR) for the purpose of establishing a federally enforceable minor source operating permit program. In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no

adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by August 28, 1995.

ADDRESSES: Written comments should be addressed to Scott Miller of the EPA Regional office listed below.

Copies of the material submitted by the State of North Carolina may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

North Carolina Department of Environment, Health, and Natural Resources, P.O. Box 29535, Raleigh, North Carolina 27626.

FOR FURTHER INFORMATION CONTACT:

Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347-2864.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 23, 1995.

William A. Waldrop,

Acting Regional Administrator.

[FR Doc. 95-18526 Filed 7-27-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[NV 11-1-7118; FRL-5265-3]

Clean Air Act Approval and Promulgation of New Source Review Implementation Plan for Clark County, NV

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes to approve with a contingency, and disapprove in

the alternative, a requested State Implementation Plan (SIP) revision submitted by the State of Nevada on behalf of Clark County for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (CAA or Act) with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). The requested revision was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment new source review SIP. This submittal also satisfies the requirements for a Prevention of Significant Deterioration (PSD) program. This proposed approval is contingent upon Clark County correcting existing deficiencies in its NSR and PSD submittal before EPA promulgates a final rulemaking on this submittal. Should Clark County fail to correct all deficiencies in this submittal, then this document will serve as a proposed disapproval of the submittal.

DATES: Comments on this proposed action must be received in writing by August 28, 1995.

ADDRESSES: To submit comments or receive further information, please contact: Jennifer Fox, Environmental Engineer, New Source Section, Air & Toxics Division (A-5-1), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: (1) EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105; (2) State of Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, Capitol Complex, 333 W. Nye Lane, Carson City, Nevada 89710; (3) Clark County Health District, 625 Shadow Lane, Las Vegas, NV 89127.

FOR FURTHER INFORMATION CONTACT: Jennifer Fox at (415) 744-1257.

SUPPLEMENTARY INFORMATION: The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Clean Air Act. EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements [see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion. EPA is currently developing a proposed rule to implement the changes under the 1990 Amendments in the new source review

provisions in Parts C and D of Title I of the Act. EPA expects to propose this rule sometime during 1995. Upon promulgation of those regulations, EPA will review those NSR SIP submittals on which it has taken final action to determine whether additional SIP revisions are necessary.

Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act provide that each implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing.¹

The Clark County Health District held a public hearing on April 22, 1993 to entertain public comment on the new source review rules. On July 29, 1993, the rules were adopted by the District and submitted to the State. On November 30, 1993 the rules were submitted to EPA as a proposed revision to the Nevada SIP.

The SIP revision was not reviewed by EPA within six months to determine completeness, and was therefore deemed complete by default. The submittal has since been reviewed and found to be complete but lacking certain requirements that would make it fully approvable. Clark County has, however, expressed an interest in revising their SIP to make the required changes and has submitted draft versions of the rule which address the deficiencies described below. Therefore, contingent on the submittal of a fully approvable SIP, EPA proposes to approve the Clark County Health District's nonattainment NSR and attainment PSD SIP submittal. If the District fails to address the deficiencies before EPA's final action on this submittal (which we expect will be within 6 months), then EPA's final action will be a disapproval.

Summary of Rule Contents

The Air Pollution Control Division of the Clark County Health District submitted to EPA for adoption into the applicable NSR SIP Rules 0 (Definitions), 12 (Preconstruction Review for New or Modified Stationary Sources), and 58 (Emission Reduction Credits). Rules 0, 12, and 58 are intended to replace existing NSR SIP Rules 1 (Definitions) and 15 (Source Registration).

These submitted rules constitute the District's new source permitting regulations. Rule 0 consists of definitions of all terms relating to new sources and modifications to existing sources of air pollution, and their regulation. Rule 12 contains new and modified source permitting requirements, including applicability, major source definitions, offsets, increment analysis, and Lowest Achievable Emission Rate/Best Available Control Technology. Rule 58 establishes procedures for the creation, banking, and use of emission reduction credits. This last rule has indirect bearing on new source review, as these credits can be obtained by new sources and used as offsets.

In Clark County, the Las Vegas Valley, Boulder City, and El Dorado Valley are currently designated as Serious nonattainment for PM-10 and Moderate nonattainment (>12.7 ppm) for CO. All other areas within the District are designated as attainment or unclassifiable with respect to the NAAQS. District nonattainment rules must therefore apply to all major new or modified stationary sources proposing to emit CO or PM-10 in the areas noted above. The nonattainment provisions must also apply to any source which would contribute to a violation of the NAAQS. The PSD provisions submitted by the District apply to certain new sources or modifications proposing to emit attainment pollutants in specified amounts.

The Clean Air Act requirements are found at sections 172 and 173 for nonattainment NSR permitting and at section 165 for PSD permitting. With certain exceptions, described below, Clark County's submittal satisfies these requirements. For a detailed description of how the submitted rule meets the applicable requirements, please refer to EPA's technical support document.

Rule Deficiencies That Must Be Corrected

Rule 0

Modification: The definition of "modification" in the submitted rule differs from the federal definition. The CFR defines a modification as a change resulting in a "net emissions increase." A net emissions increase is based on an increase in actual emissions for a physical or operational change, or an increase in potential emissions in the case of sources which have not yet constructed.

The submitted rule, however, defines a "modification" as an increase in a source's "potential to emit." As a result the rule fails to require review for

¹ Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of Section 110(a)(2).

modifications which involve a "major" increase in actual emissions, but no increase in potential to emit. To correct this deficiency, calculations in the District rule must be based on increases in actual emissions (and for sources which have not begun normal operations, actual emissions shall equal the potential to emit). Because the district has correctly defined "potential to emit" and "actual emissions," this change can be made by incorporating the federal definition of "net emissions increase" into the District rule definition of "modification."

Regulated Air Pollutant: The definition of "regulated air pollutant" in the submitted rule contains a list of emissions which are "regulated by sections containing Emission limits and by Section 12." The list of "Chemical Substances Requiring BACT and Public Notification" in Section 12.2.7, however, contains substances which are not included in the definition of "regulated air pollutant." This oversight should be corrected for rule consistency.

Volatile Organic Compound: The definition of "volatile organic compound" in the submitted rule contains a list of substances exempt from regulation as VOCs which is inconsistent with the exemption list in 40 CFR 51.100(s). This discrepancy should be corrected to avoid granting VOC emission reduction credits, as well as requiring VOC offsets, for exempt compounds. The definition in the CFR should be adopted verbatim into this section.

Rule 12

Public Notice: The submitted rule does not specify that public comments regarding an air quality permit application will be considered, except in the event of a public hearing. A thirty-day public comment period should be required for each permit application, as specified by 40 CFR 51.166(q). All public comment, oral and written, received within the specified time, should be considered in making the final decision on the approvability of the permit application.

Variance to Rule Requirements: The submitted rule outlines the procedure by which the Board of Health may grant a variance to subsection 12.2.10.6 (which requires impact analysis for NO_x sources of 100 tpy or greater). The District has explained that this variance is intended to refer to the lowered major source applicability threshold of 50 tpy for NO_x sources in the Las Vegas Valley. If so, this must be clarified in the rule, so that no variance may be granted to a source required by federal standards to undergo new source review.

Fugitive Emissions: The submitted rule contains a definition of potential to emit which includes fugitive emissions only for sources of PM-10 in the nonattainment area. Fugitives must also be included in the major source applicability determination, defined by a source's potential to emit, for all other regulated pollutants, if the source belongs to one of the source categories listed in 40 CFR 51.165(a)(1)(iv)(C).

Additional Impact Analysis for Attainment Pollutants: In many cases, the submitted rule correctly requires major sources to perform an additional impact analysis, as required in 40 CFR 51.166(i) and 51.166(o). However, the rule fails to require the analysis for VOC, lead and CO in sections 12.2.5, 12.2.8, and 12.2.13, respectively. In addition, the rule fails to require the analysis for major modifications. The rule must be amended to require the additional impact analysis for pollutant subject to regulation under the Act which will be emitted by the new source or modifications.

Alternative Siting Analysis: The submitted rule lacks a requirement that an alternative siting analysis be performed by all permit applicants for sources located within a nonattainment area. This analysis, required by CAA 173(a)(5), would demonstrate that the benefits of a proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Class I Area Visibility Protection: The submitted rule lacks the visibility protection requirements of section 169A of the CAA and described in 40 CFR 51.307. These provisions require review of major sources and modifications that may have an impact on visibility in any mandatory Class I Federal Area. This may have been overlooked, because there are currently no Class I areas in Clark County. Nonetheless, this requirement should be included in the event that such an area be designated in the future, or that a source may impact a Class I area outside of Clark County.

PSD Ambient Air Increments: The submitted rule lacks provisions which set the maximum allowable increases in PM-10, SO₂, and NO₂ to those increments listed in 40 CFR 51.166(c), for designated attainment or unclassifiable areas. The increments must be listed in the rule.

Offsets: The submitted rule states that, when required, offsets must be obtained by a source either prior to, or within thirty days of, the issuance of the Operating Permit, depending on the pollutant. Section 173 of the CAA, however, requires that offsets be

federally enforceable prior to the issuance of an Authority to Construct Permit, and in effect by the time operation commences. This requirement must be changed in order to make the rule approvable.

Additional Requirements: The submitted rule contains no provisions which require new source review for a source or modification which becomes major due to a relaxation in a federally-enforceable limit. As described in 40 CFR 51.165(a)(5)(ii), such sources and modifications are subject to major new source review "as though construction had not yet commenced." The submitted rule must add this requirement.

Hazardous Air Pollutants: The list of hazardous air pollutants in the submitted rule must be expanded to include those pollutants listed in 40 CFR 51.166(b)(23)(i), which are not also regulated by Section 112(b)(1) of the Act. These pollutants and their significance levels must be listed.

Rule 58

RACT Adjustment: The submitted rule lacks provisions requiring that existing and future emission reduction credits (ERCs) are surplus to Reasonably Available Control Technology (RACT) requirements at time of use. EPA interprets section 172(c)(1) of the Act to require a RACT level of reductions on ERCs as well as on all applicable sources. This ensures that all ERCs will be surplus at their time of use, since any banked credits that predate a RACT requirement will not be able to be counted as a credit toward meeting that requirement.

Prior Shutdowns: The submitted rule does not disallow "prior shutdown" credits as required in 40 CFR 51.165(a)(1)(xxv). As defined by this CFR section, prior shutdown credits are generated by facilities which apply for credit after the facility has already ceased to operate. The provision limiting shutdown credits applies either when the District attainment plan has been disapproved, or when this plan is not yet due, but a due date during the creation of this plan is missed. In this case, sources which seek ERCs due to a shutdown must do so at the time operation of the source ceases.

Property Rights: The submitted rule refers to procedures which allow banking of ERCs "in a legally protected manner." This language suggests that banked ERCs could be protected under property rights laws, or that their adjustment or rescission could be legally contested by the owner of the ERCs. EPA cannot approve such language, and encourages the District to

add language explicitly stating that banking does not guarantee ERCs under any property rights laws.

Mobile and Area Sources: The submitted rule allows reductions generated by mobile and area sources to be credited as ERCs which may be used as offsets. The rule fails, however, to provide for the federal enforceability of these credits. In addition, the submitted rule lacks language detailing how these emissions are to be quantified. Both the federal *Emissions Trading Policy Statement* (ETPS, 51 FR 43814, 4 December 1986) and the *Economic Incentive Program Rules* (EIP, 58 FR 11110, 23 February 1993) contain provisions concerning this issue. Unless language is added which describes how mobile and area source reductions are to be quantified and made federally-enforceable, EPA requires that all references to area and mobile source reductions be removed.

Proposed Action

EPA is proposing to approve, with disapproval in the alternative, the plan revisions submitted by Clark County on November 30, 1993. Full approval as a final action on these rules is contingent upon the District making the required changes listed above.

If the specified changes are not made before EPA's final action on this submittal, then EPA's final action will be a disapproval. If finalized, this disapproval would constitute a disapproval under section 179(a)(2) of the Act (see 57 FR 13566-67). As provided under section 179(a) of the Act, Clark County would have up to 18 months after a final SIP disapproval to correct the deficiencies that are the subject of the disapproval before EPA is required to impose sanctions. If the District does not correct its SIP deficiencies within 18 months, then section 179(a)(4) requires the immediate application of sanctions. According to 179(b), sanctions can take the form of a loss of highway funds or a two to one emissions offset ratio. Once the Administrator applies one of the section 179(b) sanctions, the State will then have an additional six months to correct any deficiencies. Section 179(a)(4) requires that both highway and offsets sanctions must be applied if any deficiencies are still not corrected after the additional six month period.

EPA is requesting comments on all aspects of the requested SIP revision and EPA's proposed rulemaking action. Comments received by date indicated above will be considered in the development of EPA's final rule.

Administrative Review

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.

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 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 any small entities affected. 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 EPA to base its actions concerning SIP's 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 Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, New source review, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: July 17, 1995.

Felicia Marcus,

Acting Regional Administrator.

[FR Doc. 95-18618 Filed 7-27-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[WI-49-01-6738b; FRL-5254-5]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve revisions to Wisconsin's State Implementation Plan (SIP) for ozone which were submitted to the USEPA on April 17, 1990, and June 30, 1994, and supplemented on July 15, 1994. Included in these revisions is a volatile organic compound (VOC) regulation which establishes reasonably available control technology (RACT) for screen printing facilities. Additionally, the State has submitted current negative declarations for pre-1990 Control Technology Guideline (CTG) categories for which Wisconsin does not have rules as well as a list of major sources affected by the 13 CTG categories that USEPA is required to issue pursuant to sections 183(a), 183(b)(3) and 183(b)(4) of the Clean Air Act (Act). These revisions were submitted to address, in part, the requirement of section 182(b)(2)(B) of the Act that States adopt RACT regulations for sources covered by pre-1990 CTG documents, and the requirement of section 182(b)(2)(C) of the Act that States revise their SIPs to establish RACT regulations for major sources of VOCs for which the USEPA has not issued a CTG document. In the final rules section of this **Federal Register**, the USEPA is approving this action as a direct final rule without prior proposal because USEPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed rule must be received on or before August 28, 1995.

ADDRESSES: Written comments should be mailed to: Carlton T. Nash, Chief,