

(2) Rule 359, adopted on June 28, 1994.

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40 CFR Part 52

[IL18-7-7024a; FRL-5436-1]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: On October 21, 1993, the Illinois Environmental Protection (IEPA) submitted to USEPA volatile organic compound (VOC) rules that were intended to satisfy part of the requirements of section 182(b)(2) of the Clean Air Act (Act) amendments of 1990. Rules submitted at that time include control requirements for certain major sources in the East St. Louis nonattainment area not covered by a Control Technique Guideline (CTG) document. These major non-CTG VOC rules apply to sources which emit (at maximum capacity) 100 tons of VOC per year. These rules provide an environmental benefit due to the imposition of additional control requirements. This rulemaking action approves, in final, Illinois' rules for major non-CTG sources in the East St. Louis nonattainment area. The rationale for the conditional approval is set forth in this final rule; additional information is available at the address indicated below. Elsewhere in this Federal Register, USEPA is proposing approval of and soliciting public comment on this requested revision to the Illinois State Implementation Plan (SIP). If adverse comments are received on this direct final rule, USEPA will withdraw the final rule and address the comments received in a new final rule. Unless this final rule is withdrawn, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective July 8, 1996 unless adverse comments are received by June 6, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request are available for inspection at the following

address: (It is recommended that you telephone Steven Rosenthal at (312) 886-6052 before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Air Programs Branch (AR-18J) (312) 886-6052.

SUPPLEMENTARY INFORMATION:

Background

Under the Act as amended in 1977, ozone nonattainment areas were required to adopt reasonably available control technology (RACT) for sources of VOC emissions. USEPA issued three sets of control technique guidelines (CTGs) documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. USEPA determined that the area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Those areas (including the East St. Louis area) that sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987, were required to adopt RACT for all CTG sources and for all major (100 tons per year or more of VOC emissions) non-CTG sources.

Section 182(b)(2) of the Act as amended in 1990 (amended Act) requires States to adopt reasonably available control technology (RACT) rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the amended Act of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) RACT for all major sources not covered by a CTG. These section 182(b)(2) RACT requirements are referred to as the RACT "catch-up" requirements.

The amended Act requires USEPA to issue CTGs for 13 source categories by November 15, 1993. A CTG was published by this date for two source categories—Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactors and Distillation; however, the CTGs for the remaining source categories have not been completed. The amended Act requires States to submit

rules for sources covered by a post-enactment CTG in accordance with a schedule specified in a CTG document. Accordingly, States must submit a RACT rule for SOCMCI reactor processes and distillation operations before March 23, 1995. Illinois has submitted a rule, covering these SOCMCI sources, which will be the subject of a separate rulemaking action.

The USEPA developed a CTG document as Appendix E to the *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*. (57 FR 18070, 18077, April 28, 1992). In Appendix E, USEPA interpreted the Act to allow a State either to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG, based on the list of CTGs USEPA expected to issue to meet the requirement in section 183. Appendix E states that if USEPA fails to issue a CTG by November 15, 1993 (which it did for 11 source categories), the responsibility shifts to the State to submit a non-CTG RACT rule for those sources by November 15, 1994. In accordance with section 182(b)(2), implementation of that RACT rule should occur by May 31, 1995. Most of these 11 categories are covered by Illinois' "generic" major non-CTG rules that are the subject of this document.

On October 21, 1993, IEPA submitted VOC rules for the East St. Louis ozone moderate nonattainment area¹ and a revision to these major non-CTG control requirements was submitted to USEPA on May 26, 1995. Most of those rules, including those which deal with source categories covered by CTGs, (and the related test methods, definitions and recordkeeping requirements) were approved by USEPA on September 9, 1994 (59 FR 46562). This document deals with those major non-CTG rules for the East St. Louis area which are intended to largely satisfy the major non-CTG control requirements of sections 182(a)(2)(A) and 182(b)(2). However, this October 21, 1993, submittal exempts bakeries and sewage treatment plants from these major non-CTG regulations. Major non-CTG regulations are, therefore, required for any major bakeries and industrial wastewater treatment plants in the East St. Louis area.

¹ The East St. Louis moderate ozone nonattainment area consists of Madison, Monroe, and St. Clair counties.

Evaluation of Rules

Subparts PP, QQ, RR and TT in Part 219 consist of "generic" major non-CTG rules for sources, in the East St. Louis ozone nonattainment area, not specifically covered by another rule. Compliance with these rules was required by May 15, 1992. These rules are generally consistent with the Chicago Federal Implementation Plan that was promulgated by USEPA on June 29, 1990 (55 FR 26818) and codified at 40 CFR § 52.741, and/or USEPA RACT guidance. The discussion below clarifies certain aspects of these non-CTG rules, including parts of these rules that differ from previously approved "generic" non-CTG VOC rules.

Sections 926, 946, 966, and 986 specify the control requirements for the rules. Subsection (a) of each of these Sections requires an overall 81 percent reduction from each emission unit. An (Illinois Pollution Control) Board Note has been added to each subsection to clarify what is intended by the term "emission unit." A further clarification of the Board Note has been provided in a June 16, 1993, letter from Dennis Lawler, IEPA.

Subparts PP, QQ, RR and TT do not apply to sources that are not major (that is, emit less than 100 tons VOC per year at maximum capacity) and exempt emission units with less than 1 ton VOC per year or 2.5 tons VOC per year (depending upon the subpart) if the total emissions from such emission units do not exceed 5 tons VOC per year. Subpart UU contains the recordkeeping and reporting requirements for the non-CTG requirements in Subparts PP, QQ, RR, and TT and Section 219.990 (in Subpart UU) contains the recordkeeping and reporting requirements for exempt emission units. Although Section 219.990 refers to emission units which are exempt, it should be noted that the owner or operator of an emission unit which is exempt because the source is not major would need to submit records for the entire source to demonstrate that maximum theoretical emissions from all non-CTG and unregulated CTG operations are below the applicable cutoff. In those cases where one or more (but not all) emission units are exempt (as in 219.920(c), 219.940(c), 219.960(c), and 219.980(c)), records must be submitted documenting that each such emission unit is exempt.

Illinois' major non-CTG VOC rules in Subparts PP, QQ, RR, and TT require applicable sources to comply with one of the following: (1) Emission capture and control techniques which achieve an overall reduction in uncontrolled

VOC emissions of at least 81 percent from each emission unit, or (2) For coating lines, the daily-weighted average VOC content shall not exceed 3.5 pounds (lbs) VOC per gallon (gal) of coating, or (3) an equivalent alternative control plan which has been approved by the Agency and the USEPA in a federally enforceable permit or as a SIP revision.

On December 17, 1992, (57 FR 59928) USEPA approved Illinois' existing Operating Permit program as satisfying USEPA's June 28, 1989, (54 FR 27274) five criteria regarding Federal enforceability. One of the criteria is that permits may not be issued that make less stringent any SIP limitation or requirement. USEPA's December 17, 1992, notice states that operating permits issued by Illinois in conformance with the five criteria (including the prohibition against States issuing operating permit limits less stringent than the regulations in the SIP) discussed in this notice will be considered federally enforceable. This notice also states Illinois' operating permit program allows USEPA to deem an operating permit not "federally enforceable."

On July 21, 1992, USEPA promulgated a new part 70 of chapter 1 of title 40 of the Code of Federal Regulations. See 57 FR 32250. Part 70 contains regulations, required by Title V of the Act, that specify the minimum elements of State operating permit programs. Part 70 is, therefore, an appropriate basis for evaluating the acceptability of Illinois' use of federally enforceable State operating permits (FESOP) and Title V permits in its VOC rules.

Section 70.6(a)(1)(iii) states:

If an applicable implementation plan allows a determination of an alternative emission limit at a part 70 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the State elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

USEPA has therefore determined that the option for alternative control plans, submitted on October 21, 1993 (with a revision submitted on May 26, 1995), in subsections 219.926(c), 219.946(b), 219.966(b), and 219.986(c), is approvable because it requires that any alternative must be equivalent to the underlying SIP requirements (consistent with part 70) and USEPA can deem a permit containing an alternative control plan to be not "federally enforceable" if

it determines that a permit is not quantifiable or practically enforceable or a permit relaxes the SIP. The underlying SIP, to which any equivalent alternative control plan would be compared, has federally enforceable control requirements, test methods, and recordkeeping and reporting requirements. In addition, a September 13, 1995, letter from IEPA contains the specific procedures for USEPA review and approval.

Subsections 219.620(a)(1)(B), 219.920(a)(2), 219.940(a)(2), 219.960(a)(2), and 219.980(a)(2) allow sources to avoid the applicability of specified major non-CTG rules, provided a source has a federally enforceable permit that limits emissions to below the applicable cutoff through capacity or production limitations. These subsections are approvable because USEPA can deem a permit to be "not federally enforceable" in a letter to IEPA. Upon issuance of such a letter, the source is no longer protected by the permit referenced in the subject subsections. The source would then be subject to the SIP requirements if its emissions exceed the applicable cutoff. This is consistent with USEPA's December 17, 1992, approval of Illinois' operating permit program which states: "In approving the State operating program USEPA is determining that Illinois' program allows USEPA to deem an operating permit not 'federally enforceable' for purposes of limiting potential to emit and to offset creditability." (57 FR 59928, 59930). IEPA has agreed to this approach and specified the applicable procedures in a March 26, 1993, letter to USEPA. In summary, these subsections are approvable because USEPA can invalidate the protection provided by an operating permit by deeming such operating permit to be "not federally enforceable" in a letter to IEPA.

Final Rulemaking Action

For the reasons discussed above, USEPA approves the major non-CTG VOC RACT rules in Part 219 (for the East St. Louis ozone nonattainment area) that were submitted on October 21, 1993 and May 26, 1995.

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on July 8, 1996. However, if we receive adverse comments by June 6, 1996, then USEPA will publish a document that withdraws this final action. If no request for a public hearing has been received, USEPA will address the public comments received in a new final rule on the requested SIP revision based on

the proposed rule located in the proposed rules section of this Federal Register. If a public hearing is requested, USEPA will publish a document announcing a public hearing and reopening the public comment period until 30 days after the public hearing. At the conclusion of this additional public comment period, USEPA will publish a final rule responding to the public comments received and announcing final action.

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, former Acting Assistant Administrator for the Office of Air and Radiation. A July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for the Office of Air and Radiation explains that the authority to approve/disapprove SIPs has been delegated to the Regional Administrators for Table 3 actions. 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, 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.

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the USEPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Section 203 requires the USEPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the USEPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The USEPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the USEPA explains why this alternative is not selected or

the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than \$100 million in any one year, the USEPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the USEPA is not required to develop a plan with regard to small governments. This rule only approves the incorporation of existing state rules into the SIP. It imposes no additional 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 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 Clean Air 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 the State action. The Clean Air Act 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. 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 July 8, 1996. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: February 7, 1996.

David A. Ullrich,

Acting Regional Administrator.

For the reasons stated in the preamble, 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)(127) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(127) On October 21, 1993, and May 26, 1995, Illinois submitted volatile organic compound control regulations for incorporation in the Illinois State Implementation Plan for ozone.

(i) *Incorporation by reference.*

(A) Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources, Part 219: Organic Material Emissions Standards and Limitations for Metro East Area, Subpart PP: 219.920, 219.923, 219.927, 219.928; Subpart QQ: 219.940, 219.943, 219.947, 219.948; Subpart RR: 219.960, 219.963, 219.967, 219.968; Subpart TT: 219.980, 219.983, 219.987, 219.988; and Subpart UU. These Subparts were adopted on September 9, 1993, Amended at 17 Ill. Reg. 16918, effective September 27, 1993.

(B) Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources, Part 219: Organic Material Emissions Standards and Limitations for Metro East Area, Subpart PP: 219.926; Subpart QQ: 219.946; Subpart RR: 219.966; and Subpart TT: 219.986. These Subparts were adopted on April 20, 1995, Amended at 19 Ill. Reg. 6958, effective May 9, 1995.

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