

## Correction of Publication

Accordingly, the publication on December 20, 1996 (61 FR 57232, FR Doc. 96-32369), Part 52, § 52.2037 is being amended by correcting an error in paragraph (f). On page 67232, in the first column, in the second sentence of paragraph (f) the words, “\* \* \* 21.7 pounds of NO<sub>x</sub> per million British thermal units (lb/MMBtu) \* \* \*” are corrected to read, “\* \* \* 21.7 pounds of NO<sub>x</sub> per ton of coal fired (lb/ton) \* \* \*”.

## Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 4, 1997.

W. Michael McCabe,

*Regional Administrator, Region III.*

[FR Doc. 97-4661 Filed 2-25-97; 8:45 am]

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## 40 CFR Part 52

[WA50-7123a; FRL-5692-8]

## Approval and Promulgation of Implementation Plans: Washington

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving in part, and disapproving in part, and taking no action in part 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 revisions pertain to General Regulations for Air Pollution Sources administered by SWAPCA. These revisions were submitted to EPA by the Director of the Washington Department of Ecology (WDOE) on January 24, 1996. In accordance with Washington statutes, SWAPCA rules must be at least as stringent as the WDOE statewide rules. **DATES:** This action is effective on April 28, 1997, unless adverse or critical comments are received by March 28, 1997. 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, Office of Air Quality (OAQ-107), EPA, 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, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ-107), Seattle, Washington 98101; and, the State of Washington, Department of Ecology, 4550 Third Avenue SE, Lacey, Washington 98504.

**FOR FURTHER INFORMATION CONTACT:** Wayne Elson, Office of Air Quality (OAQ-107), EPA, Seattle, Washington 98101, (206) 553-1463.

**SUPPLEMENTARY INFORMATION:**

## I. Background

SWAPCA amended Chapter 400 of its rules on September 21, 1995. The WDOE, on behalf of the Governor, submitted the amended regulations to EPA on January 24, 1996, as a revision to the Washington SIP. The amended

regulations pertain to General and Operating Permit Regulations for Air Pollution Sources administered by SWAPCA, and adopt by reference various other State regulations. Some of the regulations adopted by reference have been the subject of previous EPA actions on the SIP.

## II. This Action

The State of Washington's January 24, 1996, request for SIP revision includes regulations contained in Chapter 400 of SWAPCA's rules. Certain of these regulations are amendments to those currently contained in the SIP; others are entirely new additions.

## A. Unchanged

EPA approves SWAPCA 400-052, -151, -161, -190, -205, -210, -220, -240, and -260 regulations currently in the SIP, and unchanged by the January 24, 1996, revisions.

## B. Modifications

EPA approves the modifications and/or additions to the SWAPCA 400-010, -020, -030, -040, -050, -060, -070, -074, -075, -076, -081, -091, -100, -101, -105, -107, -109, -110, -112, -113, -114, -115, -171, -172, -200, -230, -250, -270, and -280 regulations currently in the SIP. Subsections of these regulations that EPA takes no action on are noted. Some are editorial changes which are housekeeping in nature. Most of those subsections EPA also took no action in May 3, 1995 (60 FR 21703). These minor changes are not substantial and provide technical or administrative clarification. The language in twelve of these regulations has been modified only slightly from that used in versions currently in the approved SIP. They include: 400-010 Policy and Purpose, 400-020 Applicability, 400-060 Emission Standards for General Process Units, 400-081 Startup and Shutdown, 400-091 Voluntary Limits on Emissions, 400-107 Excess Emissions, 400-112 Requirements for New Sources in Nonattainment Areas, 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, 400-171 Public Involvement, 400-200 Creditable Stack Height and Dispersion Techniques, and 400-250 Appeals.

The remaining changed regulations are described as follows. In 400-030, a definition (15) “closure” or stopping all processes at a facility is added. In 400-030, the second sentence of definitions (14) “Class I area” and (45) “Mandatory

Class I Federal 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. In 400-030, a definition for (37) "good agricultural practices" is added. In 400-030, a definition for (86) "upgraded gasoline dispensing facilities" is added. EPA is taking no action on 400-040(2) Fallouts and 400-040(4) Odors as these provisions are not related to the criteria pollutants regulated under the SIP. In 400-070, Emission Standards for Certain Source Categories, no action is taken on (5) Sulfuric Acid Plants, as it is not related to the criteria pollutants regulated under the SIP. Grain elevators and other wood waste burners source categories are deleted, (6) gasoline dispensing facilities and (7) abrasive blasting are added. In 400-074, Gasoline Transport Tankers, a new section is added requiring registration of owner or operator of gasoline transport tanker, gasoline loading facility or petroleum product transport tanker doing business in SWAPCA jurisdiction. In 400-075, Emission Standards for Sources Emitting Hazardous Air Pollutants, no action is being taken on the whole section because it has no relation to the criteria pollutants that are regulated under the SIP. In 400-076, Emissions Standards for Sources Emitting Toxic Air Pollutants, no action is being taken on this section because it has no relation to the criteria pollutants that are regulated under the SIP. In 400-100, Registration and Operating Permits, new registration requirements and inspections are added to this section. In 400-101, Sources Exempt from Registration Requirements, is revised to include further exemption categories and elaborates on others. In 400-105, Records, Monitoring and Reporting, no action is taken on additional emission inventory reporting requirements for sources that include toxic or hazardous air pollutants because it has no relation to the criteria pollutants that are regulated under the SIP. Inventory requirements are added for high VOC and NO<sub>x</sub> emissions in ozone nonattainment areas. In 400-109, Notice of Construction Application, new section is added specifying conditions and applicability for filing applications for new sources. Subsection (3) lists nine activities that apply to Notice of Construction. Four of the activities are recognized as federally enforceable. They are as follows: (a) New construction or installation (d) Modification, alteration or replacement of existing process or control equipment (e) Change of registered owner (purchase or sale of source, facility or

equipment) and (f) Change of location of operations of existing portable and stationary equipment. EPA takes no action on the remaining activities: (b) Change of existing approved emission limits (including Title V opt-out requests, (c) Review of existing or installed equipment operating without prior approval, (g) Review of existing equipment with an expired or lapsed approval or registration, (h) Review of a case-by-case RACT, BACT, MACT or other similar determination, and (i) Other activities as identified by the Authority. These activities would need source specific SIP revisions to change SIP requirements. 400-110 New Source Review, elaborates on applicability and clarifies and adjusts fee structure. Subsections are added to describe those conditions where a New Source Review is not required. Emission standards table added for technical clarification. Subsection (8) is added describing when Temporary, Emergency, or Substitution Sources, would come under new source requirements. Subsection (9) is added requiring new or upgraded Gasoline Dispensing Facilities to submit a Notice of Construction. In 400-115, Standards of Performance for New Sources, EPA is taking no action on this section as this provision is not related to the criteria pollutants regulated under the SIP. 400-172, Technical Advisory Council is not a requirement of the Clean Air Act (CAA), and does not directly apply to the regulation of the criteria pollutants, and thus is not being acted for inclusion into the SIP. 400-230 Regulatory Actions & Civil Penalties is expanded to identify and describe the process for each of the common types of regulatory orders issued by SWAPCA. 400-270 Confidentiality of Records and Information is a new section on confidentiality of records submitted to SWAPCA. 400-280 Powers of Authority describes statutory authority of SWAPCA as it exists in RCW 70.94.

### C. Disapprovals

EPA already acted to disapprove a number of sections of the SWAPCA rules on May 3, 1995 (80 FR 21703), but notes that these disapproved sections are still included in WDOE SIP revisions that were submitted to EPA, with minor revisions. EPA still considers its disapproval of these sections to be in effect, and by this action is again disapproving the following sections: 400-040(1) (c) and (d) and 400-040(6)(a) Standards for Maximum Emissions; 400-050 Emission Standards for Combustion and Incineration Units, the exception provision in paragraph (3); 400-120 Bubble Rules; 400-130 Acquisition and

Use of Emission Reduction Credits; 400-131 Issuance of Emission Reduction Credits; 400-136 Use of Emission Reduction Credits. 400-141 Prevention of Significant Deterioration (PSD); and 400-180 Variance. The only disapproval in addition to those sections disapproved on May 3, 1995 (80 FR 21703) is 400-030 Definition (80) SIP. A SIP is defined upon approval by EPA, not when it is submitted to EPA for approval as stated.

### 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), (45) and (80); 040 except (1)(c), (1)(d), (2), (4) and the exception provision of (6)(a); 050 except the exception provision of (3); 052; 060; 070 except (5); 074; 081; 091; 100 except the first sentence of (3)(a)(iv) and (4); 101; 105; 107; 109 except for (3)(b), (3)(c), (3)(g), (3)(h), and (3)(i); 110; 112; 113; 114; 151; 161; 171; 190; 200; 205; 210; 220; 230; 240; 250; 260; 270; and 280.

EPA is disapproving the following sections: 400-030 (80); 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 (45); 040(2); 040(4); 070(5); 075; 076; the first sentence of 100(3)(a)(iv); 100(4); 109 (3)(b), (3)(c), (3)(g), (3)(h), and (3)(i); 115; and 172.

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 April 28, 1997 unless, by March 28, 1997, 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 April 28, 1997.

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.

#### IV. Administrative Review

##### A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

##### B. Regulatory Flexibility Act

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 sections 110 and 301, 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 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. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

##### C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that

may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

##### D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

##### E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 1997. 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, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 14, 1997.  
Charles Findley,  
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 WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(70) to read as follows:

##### § 52.2470 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(70) On January 24, 1996 the Director of WDOE submitted to the Regional Administrator of EPA regulations of the SWAPCA for the control of air pollution in Clark, Cowlitz, Lewis, Skamania and Wahkiakum Counties, Washington (SWAPCA 400—General Regulation for Air Pollution Sources).

(i) Incorporation by reference.

(A) The January 24, 1996, letter from WDOE to EPA submitting requests for revisions to the Washington SIP to include regulations of the SWAPCA for the control air of pollution in Clark, Cowlitz, Lewis, Skamania and Wahkiakum Counties, Washington, as revisions to the Washington SIP, State-effective September 21, 1995. EPA is approving the following sections of SWAPCA 400—General Regulation for Air Pollution Sources: 010; 020; 030 except the second sentence of (14), (45) and (80); 040 except (1)(c), (1)(d), (2), (4) and (6)(a); 050 except the exception provision of (3); 052; 060; 070 except (5); 074; 081; 091; 100 except the first sentence of (3)(a)(iv) and (4); 101; 105; 107; 109 except for (3)(b), (3)(c), (3)(g), (3)(h), and (3)(i), 110; 112; 113; 114; 151; 161; 171; 190; 200; 205; 210; 220; 230; 240; 250; 260; 270; and 280.

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#### 40 CFR Part 180

[OPP-300454; FRL-5590-8]

RIN 2070-AC78

#### Spinosad; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This regulation establishes a time-limited tolerance with an