

40 CFR Part 52

[WA59-7134b; FRL-5708-4]

Approval and Promulgation of State Implementation Plans: Washington**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 Washington for the purpose of revising Regulations II and III of the Puget Sound Air Pollution Control Agency (PSAPCA) Regulations. The SIP revision was submitted by the State to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency 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 this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by April 21, 1997.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ-107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101. The State of Washington, Department of Ecology, 300 Desmond Drive, Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Montel Livingston, Office of Air Quality (OAQ-107), EPA, (206) 553-6985.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Dated: February 24, 1997.

Chuck Clarke,

Regional Administrator.

[FR Doc. 97-7099 Filed 3-19-97; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[MI58-01-7266; FRL-5711-2]

Approval and Promulgation of State Implementation Plan; Michigan**AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule.

SUMMARY: On May 16, 1996, the Michigan Department of Environmental Quality (MDEQ) submitted a revision to the State's New Source Review State Implementation Plan. As part of this submittal, the State included start-up, shutdown and malfunction rules: R 336.1912 Abnormal conditions, start-up, shutdown, and malfunction of a source, process, or process equipment, operating, notification, and reporting requirements; R 336.1913 Malfunction protection, applicability, prohibitions, conditions, and standards; and R 336.1914 Start-up and shutdown protection; applicability, prohibitions, conditions and standards. The Environmental Protection Agency (EPA) is proposing to disapprove these start-up, shutdown and malfunction regulations because they are not consistent with the Clean Air Act and applicable EPA policy.

DATES: Comments on this proposed rule must be received on or before April 21, 1997.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision and EPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Kathleen D'Agostino at (312) 886-1767 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-1767.

SUPPLEMENTARY INFORMATION:**I. State Submittal**

On May 16, 1996, the Michigan Department of Environmental Quality (MDEQ) submitted a revision to the State's New Source Review State Implementation Plan. As part of this submittal, the State included start-up, shutdown and malfunction rules: R 336.1912 Abnormal conditions, start-up, shutdown, and malfunction of a source, process, or process equipment, operating, notification, and reporting requirements; R 336.1913 Malfunction protection, applicability, prohibitions, conditions, and standards; and R 336.1914 Start up and shutdown protection; applicability, prohibitions, conditions and standards.¹

Rule 912 requires that a source's owner or operator operate that source in a manner consistent with good air pollution control practices for minimizing emissions during periods of abnormal conditions, start-up, shutdown, and malfunctions (SSM). The rule also contains notice and reporting requirements in the event of start-up, shutdown or malfunction. Rules 913 and 914 require that the notice and reporting requirements in Rule 912 be met in order for a source to be eligible for the affirmative defense provided in Rules 913 and 914.

Rule 913(2) states "The emission of an air contaminant in excess of an emission standard * * * or an emission limitation * * * or a violation of a continuous emission or parametric monitoring or automated recordkeeping requirement is prohibited, unless caused by the circumstances of a malfunction of a source, process, or process equipment, and the owner or operator complies with all of the applicable requirements of this rule."

Rule 914(2) states "The emission of an air contaminant in excess of an emission standard * * * or an emission limitation * * * or a violation of a continuous emission or parametric monitoring or automated recordkeeping requirement is prohibited, unless caused by the circumstances of a start-up or shutdown of a source, process, or process equipment, and the owner or operator complies with all of the applicable requirements of this rule."

Both Rules 913 and 914 then provide that if the State determines that the owner or operator violated an emission

¹ While the start-up, shutdown and malfunction regulations were submitted along with the State's New Source Review SIP, they are contained in "Part 9: Emission Limitations and Prohibitions—Miscellaneous" of Michigan's air pollution control rules; as such, they apply to all sources, not only those which are required to have a permit.

standard or limitation, or monitoring or recordkeeping requirement, and the owner or operator did not meet the requirements of the SSM regulations, then the State may take appropriate enforcement action. In such an enforcement action, the Michigan Department of Natural Resources (now the MDEQ) must provide reasonable notice of the facts constituting the alleged violation and noncompliance with the rule, while the owner or operator seeking SSM protection has the burden of proof. These provisions establish an affirmative defense for certain violations that occur during periods of SSM.

II. Comparison of State Rules to Federal Requirements

Michigan's SSM regulations contain provisions similar to certain operating requirements found in 40 CFR part 63 (general provisions for National Emission Standards for Hazardous Air Pollutants, section 112), 40 CFR part 60 (general provisions for New Source Performance Standards, section 111), and the United States Environmental Protection Agency's (EPA) SIP policy regarding treatment of SSM. See EPA's policy memorandum dated September 28, 1982 from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions". Also see EPA's clarification to the above policy memorandum dated February 15, 1983 from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, and EPA's final rule for Utah's sulfur dioxide control strategy (Kennecott Copper), 42 FR 21472 (April 27, 1977). However, Michigan's broad SSM regulations do not meet the requirements of the Act because the Act, as interpreted by the applicable EPA policy memoranda, does not allow for automatic exemptions or establish an affirmative defense from violations caused by SSM conditions.

Sections 913(2) and 914(2) establish an affirmative defense by providing an exemption for sources that violate an emission standard, emission limitation, continuous emission or parametric monitoring, or automated recordkeeping requirement if the violation is the result of SSM and the source complies with the applicable requirements of the rules. The Act and EPA policy prohibit approval of malfunction rules which provide such exemptions. See the EPA policy memoranda referenced above.

Under section 110, the EPA can approve malfunction rules which rely on the "enforcement discretion"

approach. In such an approach, the malfunction rules would establish criteria to be considered by the regulator in determining whether an enforcement action—or the exercise of discretion—is appropriate. These criteria have generally included the following:

1. To the maximum extent practicable, air pollution control equipment, process equipment, and processes were maintained and operated in a manner consistent with good practice for minimizing emissions;
2. Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;
3. The amount and duration of excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;
4. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality; and
5. The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

See the EPA policy memoranda referenced above.

There may be various ways in which to structure such an enforcement discretion approach, and EPA will not attempt to provide detailed guidance here. However, EPA notes that certain issues would have to be addressed by the State if it were to craft such an approach using the current State rule as a starting point. Among these, the definition of "malfunction" in R 336.1113(d) does not limit malfunctions to failures that are "infrequent" and "not reasonably preventable", and is therefore too broad. See, e.g., 40 CFR 60.2 and 63.2. The State's air pollution control bypass provisions in R 336.1913(3)(b) and R 336.1914(4)(b) are also broader than that permitted by the Act. See the EPA policy memoranda referenced above. The alternate emission limitations for startups and shutdowns in R 336.1914(4)(d) could (impermissibly) allow relaxations of Act requirements, including NSR limitations, New Source Performance Standards, toxics requirements (NESHAP, MACT), etc. Finally, the State SSM regulations provide no authority for MDEQ to review and require revisions to a source's written emission minimization plan for normal or usual startups and shutdowns. Such authority is appropriate to ensure that operating practices for startups and shutdowns meet good engineering practice for minimizing emissions, similar to the authority R 336.1911 currently provides for State review and

revision of written preventative maintenance and malfunction abatement plans.

III. Effect of State Provisions on Federal Enforcement

It should be noted that EPA does not recognize the Michigan SSM regulations as affecting EPA's enforcement capabilities under the Act, and reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of the State's SSM regulations. Similarly, the Michigan rules do not affect citizen suit rights under section 304 of the Act. The EPA will continue to pursue enforcement actions in accordance with its policies on enforcement discretion and any SSM provisions found in applicable Federal regulations.

IV. Proposed Rulemaking Action

To determine the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of section 110 and part D of the Act. In addition, EPA has reviewed the Wisconsin rule in accordance with EPA policy guidance documents, including: EPA's policy memorandum dated September 28, 1982 from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions"; the clarification to the above policy memorandum dated February 15, 1983 from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation; and EPA's final rule for Utah's sulfur dioxide control strategy (Kennecott Copper), 42 FR 21472 (April 27, 1977). Upon completing this review the EPA is proposing to disapprove Michigan's SIP revision request because it is inconsistent with the Act and the applicable policy set forth in these documents.

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.

V. Administrative Requirements

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.

EPA's disapproval of the State request under Section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

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 undertake various actions in association with 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. 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 the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: March 5, 1997.
Valdas V. Adamkus,
Regional Administrator.
[FR Doc. 97-7100 Filed 3-19-97; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Parts 52 and 81

[CO-001-0015b; FRL-5700-4]

Clean Air Act Approval and Promulgation of State Implementation Plan; Colorado; Prevention of Significant Deterioration; Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA proposes to approve revisions to Colorado's prevention of significant deterioration (PSD) permitting requirements in Regulation No. 3, which were submitted as revisions to the State Implementation Plan (SIP) by the Governor on August 1, 1996. EPA also proposes to delete the TSP area designation table and to revise the PM-10 area designation table in 40 CFR part 81 for Colorado. In addition, EPA proposes to amend the language in 40 CFR 52.343(a)(3) to clarify Colorado's PSD permitting authority.

In the final rules section of this Federal Register, the EPA is approving the State's SIP revision and promulgating these amendments as a direct final rule without prior proposal because the Agency views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the action is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, then 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 notice. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed action must be received in writing by April 21, 1997.

ADDRESSES: Written comments on this action should be addressed to Vicki Stamper, 8P2-A, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency,

Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2466; and Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80202-1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8P2-A, at (303) 312-6445.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final notice of the same title which is located in the Rules Section of this Federal Register.

Dated: February 27, 1997.
Patricia D. Hull,
Acting Regional Administrator.
[FR Doc. 97-7101 Filed 3-19-97; 8:45 am]
BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-246; RM-8091]

Television Broadcasting Services; Ridgecrest, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document denies an Application for Review filed by Valley Public Television, Inc. (Valley) and affirms the staff's dismissal of Valley's rulemaking petition. See 58 FR 58833 (November 4, 1993); 60 FR 31258 (June 14, 1995). The petition sought to substitute Channel *41 for vacant Channel *25 (reserved for noncommercial use) at Ridgecrest, CA to eliminate a short-spacing between Valley's application for a new noncommercial station on Channel *39 at Bakersfield, CA and Channel *25 at Ridgecrest. The Commission concluded that the rulemaking petition was properly dismissed as moot because Valley had withdrawn its television application and because no more applications can be filed for Channel *39 at Bakersfield. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 92-246, adopted March 4, 1997, and released March 14, 1997. The full text of this Commission decision is