

(R) Texas Natural Resource Conservation Commission order adopting amendments to the SIP; Docket Number 95-1198-RUL, issued December 19, 1995.

(ii) Additional Material

(A) TNRCC certification letter dated December 13, 1995, and signed by the Chief Clerk, TNRCC that the attached are true and correct copies of the SIP revision adopted by the Commission on December 13, 1995.

(B) The following portions of the SIP narrative entitled Post-1996 Rate of Progress Plan for the Beaumont/Port Arthur and Houston/Galveston Ozone Nonattainment Areas Dated December 13, 1995: The section pertaining to Storage Tanks (pp. 17-37), the section pertaining to SOCOMI Reactor and Distillation (p. 40), the Section pertaining to Plastic Parts Coating (pp. 54-55).

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 102-0120; FRL-6220-2a]

#### Final Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on November 6, 1998. This limited approval and limited disapproval action will incorporate portions of Rules 1, 2 and 4 of Regulation 2—Permits, for the Bay Area Air Quality Management District (BAAQMD or the "District") into the federally approved State Implementation Plan (SIP).

The intended effect of finalizing this limited approval and limited disapproval of these rules is to strengthen the federally approved SIP by incorporating these updated provisions and to satisfy Federal requirements for an approvable nonattainment area NSR SIP for the District.

Thus, EPA is finalizing simultaneous limited approval and limited disapproval as a revision into the California SIP under provisions of the

Act regarding EPA action on SIP submittals, and general rulemaking authority. While strengthening the SIP, this revision contains deficiencies which the BAAQMD must address before EPA can grant full approval under Section 110(k)(3).

**DATES:** This action is effective on February 25, 1999.

**ADDRESSES:** Copies of the state submittal and other supporting information used in developing the final action are available for public inspection (Docket Number CA102-0120) at EPA's Region IX office during normal business hours and at the following locations:

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

**FOR FURTHER INFORMATION CONTACT:** John Walser, Permits Office [AIR-3], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1257.

#### SUPPLEMENTARY INFORMATION:

##### I. Applicability

The following rules are being approved for limited approval and limited disapproval into the California SIP: District Regulation 2 Permits, Rule 1 General Requirements, Rule 2 New Source Review, and Rule 4 Emissions Banking. Rules 2 and 4 were submitted by the California Air Resources Board on behalf of the District to EPA on September 28, 1994. Rule 1 was submitted by the California Air Resources Board on behalf of the District to EPA on December 31, 1990.

##### II. Background

On November 6, 1998, in 63 FR 59924, EPA proposed limited approval and limited disapproval for BAAQMD Regulation 2 Permits, Rules 1, 2 and 4. The BAAQMD adopted Rule 1 on November 1, 1989, and Rules 2 and 4 on June 15, 1994. Submitted Rule 1 was found to be complete on February 28, 1991, and submitted Rules 2 and 4 were found to be complete on November 22, 1994,<sup>1</sup> pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V.<sup>2</sup> These rules were

<sup>1</sup> The proposed action on November 6, 1998 mistakenly identified the submittal and completeness date for Rule 1 as the same date as Rules 2 and 4.

<sup>2</sup> EPA adopted completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

proposed for limited approval and limited disapproval. A detailed discussion of the background for these rules and EPA's evaluation is provided in the November 6, 1998 Proposed Rulemaking Notice (NPRM) cited above.

##### III. Response to Comments

A 30 day public comment period was provided in 63 FR 59924. EPA received one public comment on the proposal from the California Council for Environmental and Economic Balance (CCEEB), and is responding to that comment in this document.

CCEEB commented that EPA should specifically exclude Section 2-4-304.3 of Regulation 2, Rule 4 from any final SIP approval of all or portions of Rule 4. Section 2-4-304.3 of Rule 4 states that "emission reduction credits may not be used to exempt a source from any other air pollution control requirements whatsoever of federal, State, or District laws, rules and regulations." CCEEB is concerned that Section 2-4-304.3 addresses State law issues, and is not necessary to meet Federal Clean Air Act requirements. In addition, CCEEB commented that the California Health and Safety Code Section 39602 provides that the California SIP "shall include only those provisions necessary to meet the requirements of the Clean Air Act."

Section 2-4-304.3 was not a section of Regulation 2, Rule 4 that EPA identified as a SIP-approvability issue in 63 FR 59924. As written, Section 2-4-304.3 of Rule 4 is not inconsistent with federal requirements or EPA policy and does not present any SIP-approvability issues. If CCEEB believes the language is inconsistent with state law, its remedy is at the state and local level. The District, if in agreement with CCEEB, would need to revise the rule and submit the rule modification to the California Air Resources Board as a SIP submittal. EPA does not have the authority to revise the rule language as requested, or exclude Section 2-4-304.3 from final SIP approval.

##### IV. EPA Evaluation and Final Action

BAAQMD Regulation 2 clarifies the terms and requirements that apply to the District's NSR regulation and emissions banking program. BAAQMD Regulation 2 was originally adopted as part of BAAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. For EPA's detailed evaluation of BAAQMD Regulation 2, Rules 1, 2 and 4, please refer to the NPRM at 63 FR 59924, November 6, 1998.

EPA has evaluated District Rules 1, 2 and 4 of Regulation 2 and has determined that the rules contain

deficiencies and are not fully consistent with CAA requirements, EPA regulations and EPA policy. Because these rule deficiencies are inappropriate for inclusion in the SIP, EPA cannot grant full approval of these rules under section 110(k)(3). Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA is granting final limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The final approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is finalizing limited approval of BAAQMD's submitted Regulation 2 under sections 110(k)(3) and 301(a) of the CAA.

It should be noted that the rules covered by this final rulemaking have been adopted by the BAAQMD, subsequently revised, and are currently in effect in the BAAQMD. EPA's final limited disapproval action does not prevent the BAAQMD or EPA from enforcing these rules.

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 Requirements

##### A. Docket

Copies of Bay Area's submittal and other information relied upon for the final actions are contained in docket number CA102-0120 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final rulemaking. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

##### B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

##### C. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental

Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

##### D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

##### E. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the

Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

##### F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act 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).

##### G. 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 annual costs to State, local, or tribal governments in the aggregate; or to 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 promulgated does not include a Federal mandate that may result in estimated annual 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.

#### H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### I. Petitions for Judicial Review

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 March 29, 1999. 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 4, 1999.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

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 *et seq.*

#### Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(182)(i)(B)(6) and (c)(199)(i)(A)(8) to read as follows:

#### § 52.220 Identification of Plan.

\* \* \* \* \*

(c) \* \* \*

(182) \* \* \*

(i) \* \* \*

(B) \* \* \*

(6) Regulation 2, Rule 1 adopted on November 1, 1989.

\* \* \* \* \*

(199) \* \* \*

(i) \* \* \*

(A) \* \* \*

(8) Regulation 2, Rule 2 and Rule 4 adopted on June 15, 1994.

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[MD079-3035a; FRL-6218-2]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOCs From the Manufacture of Explosives and Propellant

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland.

This revision imposes reasonably available control technology (RACT) requirements for volatile organic compounds (VOCs) from sources that manufacture explosives and propellant. The intent of this action is to approve Maryland's request to amend its SIP to include RACT requirements to control VOCs from the manufacture of explosives and propellant.

**DATES:** This direct final rule is effective without further notice on March 29, 1999 unless by February 25, 1999, adverse or critical comments are received by EPA. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

**FOR FURTHER INFORMATION CONTACT:** Paul T. Wentworth at (215) 814-2183, or by e-mail at wentworth.paul@epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above EPA Region III address.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

On August 28, 1998, the State of Maryland submitted a formal revision to its SIP, which consists of amendments to COMAR 26.11.19 *Control of Volatile Organic Compounds from Specific Processes*. The revision consists of the addition of a new regulation at COMAR 26.11.19.25 *Control of Volatile Organic Compounds from Explosives and Propellant Manufacturing* to establish RACT for VOCs from the manufacture of explosives and propellant. This revision was submitted to satisfy the requirements of sections 182 and 184 of the Clean Air Act to implement RACT on major sources of VOCs.