

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99-3342 Filed 2-10-99; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 164-0112a; FRL-6227-2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and the Sacramento Metropolitan Air Quality Management District (SMAQMD). SJVUAPCD's Rule 4352 controls oxides of nitrogen (NO_x) emissions from solid fuel fired boilers, steam generators and process heaters. SMAQMD's Rule 413 control NO_x emissions from stationary gas turbines operations. This action will incorporate these rules into the Federally approved SIP.

The intended effect of approving these rules is to regulate emissions of NO_x in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on April 12, 1999 without further notice, unless EPA receives adverse comments by March 15, 1999. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of

the submitted rules are also available for inspection at the following locations:

Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721.

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826.

FOR FURTHER INFORMATION CONTACT:

Max. A. Fantillo Jr, Rulemaking Office (AIR-4), Air Division, U.S.

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1183.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: SJVUAPCD's Rule 4352, Solid Fuel Fired Boilers, Steam Generators and Process Heaters, and SMAQMD's Rule 413, Stationary Gas Turbines. The SJVUAPCD rule was submitted by the California Air Resources Board (CARB) to EPA on March 26, 1996 and the SMAQMD rule was submitted on May 18, 1998.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA or the Act) were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. The air quality planning requirements for the reduction of NO_x emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a proposed rule entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_x Supplement) which describes and provides guidance on the requirements of section 182(f). The November 25, 1992 proposed rule should be referred to for further information on the NO_x requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_x ("major" as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone

nonattainment areas. The San Joaquin Valley Area is classified as serious; the Sacramento Metro Area is classified as severe;¹ therefore these areas were subject to the RACT requirements of section 182(b)(2), cited below and the November 15, 1992 deadline.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control techniques guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_x CTGs issued before enactment and EPA has not issued a CTG document for any NO_x sources since enactment of the CAA. The RACT rules covering NO_x sources and submitted as SIP revisions, are expected to require final installation of the actual NO_x controls as expeditiously as practicable, but not later than May 31, 1995.

The State of California submitted many revised RACT rules for incorporation into its SIP on March 26, 1996 and May 18, 1998, including the rules being acted on in this document. This document addresses EPA's direct-final action for SJVUAPCD Rule 4352, Solid Fuel Fired Boilers, Steam Generators and Process Heaters, and SMAQMD Rule 413, Stationary Gas Turbines. SJVUAPCD adopted Rule 4352 on October 19, 1995 and SMAQMD adopted Rule 413 on May 1, 1997. These submitted rules were found to be complete on May 5, 1996 and July 17, 1998 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V² and are being finalized for approval into the SIP. By today's document, EPA is taking direct final action to approve these rules into the Federally approved SIP.

NO_x emissions contribute to the production of ground level ozone and smog. SJVUAPCD's Rule 4352 controls emissions of NO_x from solid fuel fired boilers, steam generators and process heaters and SMAQMD's 413 controls emissions of NO_x from stationary gas turbine operations. The rules were adopted as part of SJVUAPCD's and SMAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the CAA requirements cited above. The

¹ San Joaquin Valley Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991). The Sacramento Metro Area was reclassified from serious to severe on June 1, 1995. See 60 FR 20237 (April 25, 1995).

² EPA adopted the 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).

following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a NO_x rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110, and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents.³ Among these provisions is the requirement that a NO_x rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_x emissions.

For the purposes of assisting state and local agencies in developing NO_x RACT rules, EPA prepared the NO_x Supplement to the General Preamble, cited above (57 FR 55620). In the NO_x Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO_x emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_x (see section 4.5 of the NO_x Supplement). In addition, pursuant to section 183(c), EPA has issued alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_x. The ACT documents provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_x. However, the ACTs do not establish a presumptive norm for what is considered RACT for stationary sources of NO_x. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_x RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

Rule 4352 limits emissions of oxides of nitrogen (NO_x) and carbon monoxide (CO) from solid fuel fired boilers, steam generators, and process heaters within the San Joaquin Valley Area.

³ Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register Notice**" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

The SIP version of Rule 4352 has emission limits that was previously determined to meet the reasonably available control technology (RACT) requirements. The rule also has enforceability elements such as applicability, definitions, recordkeeping, test methods, and compliance schedule.

Rule 4352 was revised to allow the use of CARB Method 100, an alternative test method, to provide flexibility to owners/operators and simplify the compliance determination. This alternative test method may be used for measuring NO_x and CO emissions, and for measuring the stack gas oxygen. CARB Method 100 has been approved by EPA.

Rule 413 limits NO_x emissions from stationary gas turbines with ratings equal or greater than 0.3 megawatt (MW) within the SMAQMD area.

The current version of Rule 413 has provisions for emission limits that meets the California Air Resources Board (CARB) reasonably available control technology and best available retrofit control technology (RACT/BARCT) emission limits for gas turbines. The rule also has enforceability elements such as applicability, definitions, monitoring, recordkeeping, test methods, and compliance schedules. All these elements are already in the SIP approved version of the rule.

Rule 413 is being revised to change and improve clarity to some provisions in the rule. Specifically, the changes are the following: (1) exempts emergency standby units from the requirement to install continuous emission monitoring systems (CEM); instead, these units will install meters to record the time they operate; (2) exempt units removed from service by May 31, 1997 from the requirement to install CEMs; (3) identifies clearly exempted emergency standby units according to the type of emergency and established limits for the total hours of operation allowed per year for each unit.

A more detailed discussion of the sources controlled, the controls required, and the justification for why these controls represent RACT can be found in the Technical Support Documents (TSDs) for SJVUAPCD's Rule 4352 and SMAQMD's Rule 413, dated January 20, 1999.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SJVUAPCD's Rule 4352, Solid Fuel Fired Boiler, Steam Generators and Process Heaters, and SMAQMD's Rule 413, Stationary Gas Turbines are being

approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO_x Supplement to the General Preamble.

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.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve SIP revision should adverse comments be filed. This rule will be effective April 12, 1999 without further notice unless the agency receives adverse comments by March 15, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this action will be effective April 12, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under E.O. 12875, 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. If the mandate is unfunded, EPA must 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 written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 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.

C. 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.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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. If the mandate is unfunded, EPA must 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 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. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. 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).

F. 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.

G. 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).

H. 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 April 12, 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, Reporting and recordkeeping requirements, Volatile organic compound. Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 14, 1999.

Felicia Marcus,

Regional Administrator, Region 9.

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)(230)(i)(D)(I) and (255)(i)(A)(4) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(230) * * *
(i) * * *

(D) San Joaquin Valley Unified Air Pollution Control District.

(I) Rule 4352, amended on October 19, 1995.

* * * * *

(255) * * *
(i) * * *
(A) * * *

(4) Rule 413, amended May 1, 1997.

* * * * *

[FR Doc. 99-3143 Filed 2-10-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-6232-3]

RIN 2050-AE61

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Exemption for Leachate from Non-Hazardous Waste Landfills; Final Rule.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today EPA is temporarily deferring from the definition of hazardous waste landfill leachate and landfill gas condensate derived from previously disposed wastes that now meet the listing descriptions of one or more of the recently added petroleum refinery wastes (waste codes K169, K170, K171, and K172, promulgated August 6, 1998, 63 FR 42110). Pending further study of this issue, this deferral is provided to landfill leachate and gas condensate that is subject to regulation

under the Clean Water Act (CWA). EPA is also stipulating that as one condition of this deferral, this leachate may not ordinarily be managed in surface impoundments or otherwise placed on the land after February 13, 2001.

EFFECTIVE DATE: This rule is effective February 5, 1999.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F-1999-PR3F-FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603-9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page. The index and some supporting materials are available electronically. See the Supplementary Information section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424-9346 or TDD 800 553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412-9810 or TDD 703 412-3323. For more detailed information on specific aspects of this rulemaking, contact Ross Elliott, Office of Solid Waste 5304W, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 703 308-8748, elliott.ross@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

The index and the following supporting materials are available on the Internet: Response to Comment Document. Follow these instructions to access the information electronically: www.epa.gov/epaoswer/hazwaste/id/petroleum/ FTP: [ftp.epa.gov](ftp://ftp.epa.gov), Login: anonymous, Password: your Internet address, Files are located in /pub/epaoswer.

In addition, the document entitled *Development Document for Proposed Effluent Limitations Guidelines and Standards for the Landfills Point Source Category*, EPA-821-R-97-022, January 1998, placed in the docket for this notice, can be obtained through the internet at www.epa.gov/OST/guide/2lndfls/techdev.html.

The contents of the preamble to this final rule are listed in the following outline:

- I. Affected Entities
- II. Legal Authority and Background
- III. Summary of NODA and Proposed Temporary Deferral

IV. Today's Action

V. Response to Comments

VI. Administrative Assessments

A. Executive Order 12866

B. Regulatory Flexibility Act

C. Unfunded Mandates Reform Act

D. Paperwork Reduction Act

E. Executive Order 12875: Enhancing the Intergovernmental Partnership

F. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

G. Executive Order 13045: Protection of Children from Environmental Risks and Safety Risks

H. National Technology Transfer and Advancement Act of 1995

I. Executive Order 12898: Environmental Justice

VII. The Congressional Review Act

VIII. Rationale for Immediate Effective Date

I. Affected Entities

Entities potentially affected by this action are those landfills, both commercial and government-owned, that historically received one or more of the newly-listed petroleum refinery wastes (K169-K172) and that generate landfill leachate or landfill gas condensate.

II. Legal Authority and Background

These regulations are being promulgated under the authority of sections 2002(a) and 3001(a), (b) and (e)(2), 3004(g) and (m) of the Solid Waste Disposal Act (commonly referred to as RCRA), as amended, 42 U.S.C. 6912(a), and 6921(b) and (e)(2).

As described in the August 6, 1998 NODA, very late in the process of promulgating four new hazardous waste listings, the Agency was alerted to the concern that any new listings for petroleum wastes may have potentially significant impacts on the management of leachate collected from certain non-hazardous waste landfills. Specifically, one company that owns and operates non-hazardous waste landfills expressed concern that because some of their facilities have historically received and disposed of some or all of the waste streams listed in the final rulemaking published August 6, 1998 (i.e., K169, K170, K171, and K172), the leachate that is collected and managed from these landfills would be classified by these same waste codes after the effective date of the new petroleum waste listings. 63 FR 42190. However, if Subtitle C regulation were to apply to leachate generated from such landfills, leachate now trucked to POTWs would likely no longer be managed by POTWs, since POTW owner/operators (understandably) would not wish their facilities to become subject to RCRA Subtitle C regulation. This company argued that this could lead to vastly