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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ063–0034; FRL–6916–4]

Revisions to the Arizona State Implementation Plan, Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval of revisions to the Pinal County Air Quality Control District (PCAQCD) portion of the Arizona State Implementation Plan (SIP). This action was proposed in the **Federal Register** on July 24, 2000 and concerns volatile organic compound (VOC) emissions from stationary storage tanks, dock loading and leakages from pumps and compressors. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action approves local rules that regulate these emission sources but identifies several rule deficiencies. There are no sanctions associated with this action as PCAQCD is in attainment with the ozone NAAQS.

EFFECTIVE DATE: This rule is effective on January 25, 2001.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

Pinal County Air Quality Control District, Building F, 31 North Pinal Street, (P.O. Box 987), Florence, AZ 85232.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), U.S. EPA, Region IX, (415) 744–1185.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Proposed Action

On July 24, 2000 (65 FR 45566), EPA proposed a limited approval of the following rules that were submitted for incorporation into the Arizona SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
PCAQCD	5–18–740	Storage of Volatile Organic Compounds—Organic Compound Emissions	02/22/95	11/27/95
PCAQCD	5–19–800	General	02/22/95	11/27/95
PCAQCD	5–24–1055	Pumps and Compressors—Organic Compound Emissions	02/22/95	11/27/95

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. However, we cannot grant a full approval because the rules contain deficiencies which conflict with section 110 of the Act. Our proposed action contains more information on the basis for this rulemaking, but the major deficiency that we identified is that the rules do not adequately specify test methods, recordkeeping, monitoring, and other requirements needed to make the rules enforceable.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received a letter dated August 22, 2000 from Donald Gabrielson of PCAQCD. This letter clarified that EPA's proposed action ''will not trigger a requirement for additional revisions of these rules.'' EPA concurs with this statement. The letter also requested that EPA explicitly delete old PCAQCD rules R7–3–3.1, 3–2 and 3–3 when approving new PCAQCD rules 5–18–740, 19–800 and 24–1055. As stated below, EPA's final action to approve the new rules will supercede the old rules.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rules. This action incorporates the submitted rules into the Arizona SIP, including those provisions identified as deficient and will supercede Rules 7–3–3.1, 7–3–3.2, and 7–3–3.3 from the SIP. Note that the submitted rules have been adopted by the PCAQCD, and EPA's final limited approval does not prevent PCAQCD from enforcing them. Because this is an attainment area, EPA is not simultaneously finalizing a limited disapproval of the rules. As a result, no sanctions clocks under section 179 or FIP clocks under section 110(c) are associated with this action.

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 13045

Executive Order 13045, entitled 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 health or safety risks.

C. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, 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 OMB, 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, E.O. 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. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply.

D. Executive Order 13132

E.O. 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces E.O. 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. E.O. 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order 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 act on 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 CAA, 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 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 costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on 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. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

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**. A major rule cannot take effect until 60 days after it is published 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 February 26, 2001. 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, Volatile organic compounds.

Dated: November 28, 2000.

Felicia Marcus,

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 D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(84)(i)(F) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(84)

(i) * * *

(F) Amendments to Rules 5–18–740, 5–19–800, and 5–24–1055 adopted on February 22, 1995.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–6921–5]

RIN 2050–AE76

Deferral of Phase IV Standards for PCB's as a Constituent Subject to Treatment in Soil

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is temporarily deferring a portion of the rule applying Land Disposal Restrictions (LDR) under the Resource Conservation and Recovery Act (RCRA) to constituents subject to treatment (CST) in soils contaminated with certain characteristic hazardous wastes. EPA promulgated this rule on May 26, 1998. Specifically, EPA is temporarily deferring the requirement that polychlorinated biphenyls (PCBs) be considered a CST when they are present in soils that exhibit the Toxicity Characteristic for metals. EPA is taking this action because the regulation appears to be discouraging generators from cleaning up contaminated soils, which is contrary to what EPA intended when we promulgated alternative treatment standards for contaminated soils. In addition, EPA needs more time to restudy the issue of appropriate treatment standards for metal-contaminated soils which also contain PCBs as CST. The Agency still requires generators to treat these soils to meet LDR standards for all hazardous constituents except PCBs. Generators also are required to treat PCBs if the total concentration of halogenated organic compounds in the soil equals or exceeds 1000 parts per million.

DATES: This rule is effective December 26, 2000.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. The docket identification number is F–2000–PCBP–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, D.C. metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Ernesto Brown, Office of Solid Waste, Mail Code 5303W, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave NW, Washington, D.C. 20460–0002, (703) 308–8608, brown.ernie@epa.gov

SUPPLEMENTARY INFORMATION: You can find the index and the following supporting materials on the Internet at: http://www.epa.gov/epaoswer/hazwaste/ldr/index.htm

Preamble Outline

I. Authority

These regulations are promulgated under the authority of sections 1006(b), 2002, and 3004 of RCRA, as amended, 42 U.S.C. 6905, 6012(a), 6921, and 6924.

II. Background

A. Land Disposal Restrictions Program

The LDR program generally requires that generators of hazardous wastes pretreat the wastes before they can be disposed of on land. The treatment must substantially reduce the toxicity or mobility of the hazardous waste to minimize short- and long-term threats to human health and the environment posed by the waste's disposal. See RCRA section 3004 (m)(1). EPA typically accomplishes this objective by requiring that hazardous constituents in the wastes be treated to, or be present at levels no greater than levels, set out in 40 CFR Part 268, reflecting performance of the Best Demonstrated Available Technology for the waste. In addition to BDAT treatment levels, EPA uses treatability variances (both risk-based and technology based), and determination equivalency (see 40 CFR 268.42) for situations where the treatment standard is specified as a method of treatment and other technologies perform comparably to the specified method.

B. Contaminated Soils

Contaminated soils excavated during a remedial action, whether it is conducted under RCRA, Superfund, or state authority, are subject to the Land Disposal Restriction (LDR) requirements when the soil contains listed hazardous