§ 160.206 [Amended]
  ■ 3. In §160.206, item (8) in table 160.206, is suspended.
§ 160.210 [Amended]
  ■ 4. In §160.210, in paragraph (b), the last sentence in the paragraph is suspended; in paragraph (c), the last sentence in the paragraph is suspended; and paragraph (d) is suspended.
§ 160.212 [Amended]
  ■ 5. In §160.212, paragraph (c) is suspended.


Paul J. Pluta,
Assistant Commandant for Marine Safety.

Environmental Protection Agency.

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 52
Approval and Promulgation of Air Quality Implementation Plans; Montana; Billings/Laurel Sulfur Dioxide State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving some, and limitedly approving and limitedly disapproving other, revisions to the Billings/Laurel sulfur dioxide (SO2) State Implementation Plan (SIP) submitted by the State of Montana on July 29, 1998 and May 4, 2000. The May 4, 2000 SIP revision was submitted to satisfy earlier commitments made by the Governor. The intended effect of this action is to make federally enforceable those provisions that EPA is partially and limitedly approving, and to limitedly disapprove those provisions that are not fully approved. EPA is taking this action under sections 110 and 179 of the Clean Air Act (Act).

DATES: This final rule is effective June 23, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202 and copies of the Incorporation by Reference material may be inspected at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT:
Laurie Ostrand, EPA, Region 8, (303) 312–6437.

Supplementary Information:

I. Summary of EPA’s Final Action on Portions of the State of Montana’s July 29, 1998 Submittal and all of the May 4, 2000 Submittal

II. Background

III. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials CO mean or refer to carbon monoxide.

(iii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.

(iv) The initials SIP mean or refer to State Implementation Plan.

(v) The initials SO2 mean or refer to sulfur dioxide.

(vi) The words State or Montana mean the State of Montana, unless the context indicates otherwise.

(vii) The initials SWS mean or refer to sour water stripper.

(viii) The initials YELP mean or refer to the Yellowstone Energy Limited Partnership.

I. Summary of EPA’s Final Action on Portions of the State of Montana’s July 29, 1998 Submittal and All of the May 4, 2000 Submittal

We are approving the following provisions:

• YELP’s emission limits in sections 3(A)(1) through (3) and reporting requirements in section 7(C)(1)(b) of YELP’s exhibit A submitted on May 4, 2000.

• Provisions related to the burning of SWS overheads in the F–1 Crude Furnace (and exhausted through the F–2 Crude/Vacuum Heater stack) at ExxonMobil in sections 3(E)(4) and 4(E) (excluding “or in the flare” and “or the flares” in both sections), 3(A)(2), and 3(B)(3) of ExxonMobil’s exhibit A, submitted on July 29, 1998 and method #6A–1 of attachment #2 of...

- Minor changes in sections 3, 3(A) and 3(B) (only the introductory paragraphs); and sections 3(E)(3), 6(B)(7), 7(B)(1)(d), 7(B)(1)(j), 7(C)(1)(b), 7(C)(1)(d), 7(C)(1)(f), and 7(C)(1)(l) of ExxonMobil's exhibit A, submitted on May 4, 2000.

We are limitedly approving and limitedly disapproving the following provisions:

- Provisions related to the fuel gas combustion emission limitations at ExxonMobil in sections 3(B)(2), 4(B), and 6(B)(3) of ExxonMobil's exhibit A, submitted on July 29, 1998 and section 3(A)(1) of ExxonMobil's exhibit A, submitted on May 4, 2000.

- Provisions related to ExxonMobil's coker CO-boiler emission limitation in sections 2(A)(11)(d), 3(B)(1) and 4(C) of ExxonMobil's exhibit A, submitted on May 4, 2000.

- Provisions related to the burning of SWS overheads at Conex in sections 3(B)(2) and 4(D) (excluding "or in the flare" and "or the flare" in both sections), 3(A)(1)(d), and 4(B) of Conex's exhibit A, submitted on July 29, 1998, and method #6A-1 of attachment #2 of Conex's exhibit A, submitted on May 4, 2000.

We caution that if sources are subject to more stringent requirements under other provisions of the Act (e.g., section 111 new source performance standards; Title I, Part C, prevention of significant deterioration); or SIP-approved permit programs under Title I, Part A), our approval and limited approval of the SIP (including emission limitations and other requirements), would not excuse sources from meeting these other more stringent requirements. Also, our action on this SIP is not meant to imply any sort of applicability determination under other provisions of the Act (e.g., section 111; Title I, Part C; or SIP-approved permit programs under Title I, Part A).

II. Background

On May 2, 2002, 67 FR 22242, we proposed action on portions of the State of Montana's July 29, 1998 submittal and all of the May 4, 2000 submittal. No comments were received on our proposed action. We are finalizing our action as proposed. For further information regarding the basis for this action, the reader should refer to our proposed action.

Once we approve a SIP, or parts of a SIP, the portions approved are legally enforceable by us and citizens under the Act. Conversely, we limitedly approve/disapprove a SIP, or parts of a SIP, the portions limitedly approved/disapproved are also legally enforceable by us and citizens under the Act. Under a limited approval/disapproval action, we approve and disapprove the entire rule even though parts of it do and parts do not satisfy requirements under the Act. The rule remains a part of the SIP, however, even though there is a disapproval, because the rule strengthens the SIP. The disapproval only concerns the failure of the rule to meet specific requirements of the Act and does not affect incorporation of the rule as part of the approved, federally enforceable SIP. By disapproving parts of the plan, we are determining that the requirements necessary to demonstrate attainment in the area have not been met and we may develop a plan or parts of a plan to assure that attainment will be achieved.

EPA believes partially and limitedly approving the Billings/Laurel SO2 SIP meets the requirements of section 110(l) of the Act. The provisions of the plan that we are partially and limitedly approving strengthen the Montana SIP by providing specific emission limits for several SO2 sources in Billings/Laurel. This will achieve progress toward attaining the SO2 NAAQS.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., OMB must approve all “collections of information” by EPA. The Act defines “collection of information” as a requirement for “answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * * ” 44 U.S.C. 3502(3)(A). Because this rule does not impose an information collection burden, the Paperwork Reduction Act does not apply.

C. 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 for-profit enterprises, and small governmental jurisdictions.

This partial and limited approval 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. 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).

Moreover, EPA’s limited disapproval will not have a significant impact on a substantial number of small entities because the limited disapproval action only affects two industrial sources of air pollution in Billings/Laurel, Montana: Conex Harvest Cooperatives and ExxonMobil Company, USA. Only a limited number of sources are impacted by this action. Furthermore, as explained in this action, the submission does not meet the requirements of the Clean Air Act and EPA cannot approve the submission. The limited disapproval will not affect any existing State requirements applicable to the entities. Federal disapproval of a State submittal does not affect its State enforceability. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

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 partial and limited approval and limited disapproval actions do not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal government.
governments in the aggregate, or to the private sector. This Federal action
partially and limitedly approves and
limitedly disapproves 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.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10,
1999) revokes and replaces Executive
Orders 12612 (Federalism) and 12875
(Enhancing the Intergovernmental
Partnership). Executive Order 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
Executive Order 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 proposed
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
Executive Order 13132, because it
merely partially or limitedly approves
and limitedly disapproves 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.

F. Executive Order 13175, Consultation
and Coordination With Indian Tribal
governments

Executive Order 13175, entitled
“Consultation and Coordination with
Indian Tribal Governments” (65 FR
67249, November 6, 2000), requires EPA
to develop an accountable process to
ensure “meaningful and timely input by
tribal officials in the development of
regulatory policies that have tribal
implications.” This final rule does not
have tribal implications, as specified in
Executive Order 13175. It will not have
substantial direct effects on tribal
governments, on the relationship
between the Federal government and
Indian tribes, or on the distribution of
power and responsibilities between the
Federal government and Indian tribes.
This action does not involve or impose
any requirements that affect Indian
Tribes. Thus, Executive Order 13175
does not apply to this rule.

G. Executive Order 13045, Protection
of Children From Environmental Health
and Safety Risk

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 Executive
Order 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 Executive
Order 13045 because it does not involve
decisions intended to mitigate
environmental health or safety risks.

H. Executive Order 12311, Actions That
Significantly Affect Energy Supply,
Distribution, or Use

This rule is not subject to Executive
Order 12311, “Actions Concerning
Regulations That Significantly Affect
Energy Supply, Distribution, or Use” (66
FR 28355, May 22, 2001) because it is
not a significant regulatory action under
Executive Order 12866.

I. 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.

The EPA believes that VCS are
inapplicable to this action. Today’s
action does not require the public to
perform activities conducive to the use
of VCS.

J. Congressional Review Act

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. Section 804,
however, exempts from section 801 the
following types of rules: rules of
particular applicability: rules relating to
agency management or personnel; and
rules of agency organization, procedure,
or practice that do not substantially
affect the rights or obligations of
non-agency parties. 5 U.S.C. 804(3). EPA is
not required to submit a rule report
regarding this action under section 801
because this is a rule of particular
applicability.

K. 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
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, Incorporation by
reference, Intergovernmental relations,
Reporting and recordkeeping
requirements, Sulfur oxides.


Robert E. Roberts,
Regional Administrator, Region 8.

40 CFR part 52 is amended to read 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 BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(52) to read as follows:

§ 52.1370 Identification of plan

(c) * * * * *


(i) Incorporation by reference.

(A) Sections 3(B)(2) and 4(D) (excluding “or the flare” and “or the flare” in both sections), 3(A)(1)(d) and 4(B) of Cenex Harvest States Cooperatives’ exhibit A to the stipulation between the Montana Department of Environmental Quality and Cenex Harvest States Cooperatives, adopted June 12, 1998 by Board Order issued by the Montana Board of Environmental Review.

(B) Board Order issued March 17, 2000 by the Montana Board of Environmental Review adopting and incorporating the February 14, 2000 stipulation between the Montana Department of Environmental Quality and Cenex Harvest States Cooperatives. This stipulation revises attachment #2 to Cenex Harvest States Cooperatives’ exhibit A to require the use of method #6A–1.

(C) Sections 3(E)(4) and 4(E) (excluding “or the flare” and “or the flare” in both sections), 3(A)(2), 3(B)(2), 3(B)(3), 4(B) and 6(B)(3) of Exxon’s exhibit A to the stipulation between the Montana Department of Environmental Quality and Exxon, adopted June 12, 1998 by Board Order issued by the Montana Board of Environmental Review.

(D) Board Order issued March 17, 2000, by the Montana Board of Environmental Review adopting and incorporating the February 14, 2000 stipulation between the Montana Department of Environmental Quality and Exxon Mobil Corporation. The stipulation adds the following to Exxon Mobil Corporation’s exhibit A: method #6A–1 of attachment #2 and sections 2(A)(11)(d), 4(C), 7(B)(1)(j) and 7(C)(1)(f). The stipulation revises the following sections of Exxon Mobil Corporation’s exhibit A: 3 (introductory text only), 3(A)(introductory text only), 3(A)(1), 3(B)(introductory text only), 3(B)(1), 3(E)(3), 6(B)(7), 7(B)(1)(d), 7(C)(1)(b), 7(C)(1)(d), and 7(C)(1)(f).

(E) Board Order issued on March 17, 2000, by the Montana Board of Environmental Review adopting and incorporating the February 14, 2000 stipulation between the Montana Department of Environmental Quality and Yellowstone Energy Limited Partnership (YELP). The stipulation revises the following sections of YELP’s exhibit A: sections 3(A)(1) through (3) and 7(C)(1)(b).

3. In § 52.1384, add paragraph (e) to read as follows:

§ 52.1384 Emission control regulations.

(e) In 40 CFR 52.1370(c)(52), we approved portions of the Billings/Laurel Sulfur Dioxide SIP for the limited purpose of strengthening the SIP. Those provisions that we limitedly approved are hereby limitedly disapproved. This limited disapproval does not prevent EPA, citizens, or the State from enforcing the provisions. This paragraph identifies those provisions of the Billings/Laurel SO2 SIP identified in 40 CFR 52.1370(c)(52) that have been limitedly disapproved.

(1) Sections 3(B)(2) and 4(D) (excluding “or the flare” and “or the flare” in both sections, which was previously disapproved in paragraphs (d)(1)(i)(B) and (C) above), 3(A)(1)(d) and 4(B) of Cenex Harvest State Cooperatives’ exhibit A to the stipulation between the Montana Department of Environmental Quality and Cenex Harvest State Cooperatives, adopted June 12, 1998 by Board Order issued by the Montana Board of Environmental Review.

(2) Method #6A–1 of attachment #2 of Cenex Harvest State Cooperatives’ exhibit A, as revised pursuant to the stipulation between the Montana Department of Environmental Quality and Cenex Harvest State Cooperatives, adopted by Board Order issued on March 17, 2000, by the Montana Board of Environmental Review.

(3) Sections 3(B)(2), 4(B), and 6(B)(3) of Exxon’s exhibit A to the stipulation between the Montana Department of Environmental Quality and Exxon, adopted on June 12, 1998 by Board Order issued by the Montana Board of Environmental Review.

(4) Sections 2(A)(11)(d), 3(A)(1), 3(B)(1), and 3(B)(3) of Exxon Mobil Corporation’s exhibit A, as revised pursuant to the stipulation between the Montana Department of Environmental Quality and Exxon Mobil Corporation, adopted by Board Order issued on March 17, 2000, by the Montana Board of Environmental Review.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[VT–1226a; FRL–7502–1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Vermont; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the sections 111(d) negative declaration submitted by the Vermont Department of Environmental Conservation (DEC) on August 20, 1996. This negative declaration adequately certifies that there are no existing municipal solid waste (MSW) landfills located in the state of Vermont that have accepted waste since November 8, 1987 and that must install collection and control systems according to EPA’s emissions guidelines for existing MSW landfills.

EPA publishes regulations under sections 111(d) and 129 of the Clean Air Act requiring states to submit control plans to EPA. These state control plans show how states intend to control the emissions of designated pollutants from designated facilities (e.g., landfills). The state of Vermont submitted this negative declaration in lieu of a state control plan.

DATES: This direct final rule is effective on July 21, 2003 without further notice unless EPA receives significant adverse comment by June 23, 2003. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: You should address your written comments to: Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, MA 02114–2023.

Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S.