

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. On May 27, 2004, from 10 a.m. (local) until 3 p.m. (local) add temporary § 165.T09-016 to read as follows:

**§ 165.T09-009 Security Zone; Duluth Harbor, Duluth, Minnesota.**

(a) *Location.* The following area is designated as a security zone: The waters of Duluth Harbor, within a 250 yard radius from a fixed point located at 46°46'52" N, 92°05'47" W. These coordinates are based upon North American Datum (NAD 1983).

(b) *Effective time and date.* This regulation is effective from 10 a.m. until 3 p.m. (local), on May 27, 2004.

(c) *Regulations.* Entry into, transit through, or anchoring within the security zone is prohibited unless authorized by the Captain of the Port Duluth or the Coast Guard Patrol Commander.

Dated: May 12, 2004.

**H.M. Nguyen,**

*Commander, U.S. Coast Guard, Captain of the Port Duluth.*

[FR Doc. 04-11389 Filed 5-19-04; 8:45 am]

**BILLING CODE 4910-15-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[IN 140-4a; FRL-7658-9]

**Approval and Promulgation of Implementation Plans; Indiana**

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

**ACTION:** Direct final rule.

**SUMMARY:** The United States Environmental Protection Agency, through this action, is approving rules submitted by the State of Indiana as revisions to its State Implementation Plan (SIP) for Prevention of Significant Deterioration (PSD) air quality construction permit program. All public comments received will be addressed in a subsequent final rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** This "direct final" rule is effective July 19, 2004, unless EPA receives written adverse comment by June 21, 2004. If adverse written comment is received, EPA 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:** Submit your comments, identified by Docket ID No. IN-140, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- E-mail: [blakley.pamela@epa.gov](mailto:blakley.pamela@epa.gov).
- Fax: (312) 886-5824.
- Mail: Pamela Blakley, Acting Chief, Air Programs Branch, United States Environmental Protection Agency, Mail Code AR-18J, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- Hand Delivery: Deliveries are only accepted during the Docket's normal hours of operation (8:15 a.m. to 4:45 p.m. CDT), and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. IN-140. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov), or e-mail. The federal [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Unit I of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in an index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is

restricted by statute. Publicly available docket materials are available in hard copy at the Air Permit Section, Air Programs Branch (AR-18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 (Docket ID IN-140), Monday through Friday, excluding holidays. The Docket telephone number is (312) 353-5697.

**FOR FURTHER INFORMATION CONTACT:**

Ethan Chatfield, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604; telephone number: (312) 886-5112; fax number: (312) 886-5824; e-mail address: [chatfield.ethan@epa.gov](mailto:chatfield.ethan@epa.gov).

**SUPPLEMENTARY INFORMATION:** This supplementary information section is organized as follows:

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**I. General Information**

*A. Does This Action Apply to Me?*

The PSD rules apply to the construction or modification of major sources of air pollution. Indiana has already adopted these rules; therefore, air pollution sources will not be subject to any additional requirements. This rulemaking action merely approves the State rules into the SIP, making them federally enforceable under the Clean Air Act (CAA). Because Indiana has a federally-approved State program, anyone wishing to appeal a PSD permit will continue to do so under the State's environmental appeals process.

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one

complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iii. Describe any assumptions and provide any technical information and/or data that you used.
- iv. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- v. Explain your views as clearly as possible and provide specific examples to illustrate your concerns, and suggest alternatives.
- vi. Make sure to submit your comments by the comment period deadline identified.

## II. EPA Action and Review

### A. What Is the Purpose of This Document?

This document approves the SIP revision request submitted by IDEM for changes in its PSD program responsive to EPA conditional approval rulemaking.

### B. What Is the History of IDEM's PSD Program?

On September 30, 1980, EPA delegated to IDEM the authority to implement and enforce the federal PSD program (40 CFR 52.21). On April 11, 2001, IDEM submitted a request to EPA to revise its SIP to incorporate its PSD regulations in place of the federal delegated rules. On February 1, 2002, IDEM submitted to EPA a revised request resolving issues identified by EPA during an informal review. IDEM withdrew its August 11, 2001, request on February 27, 2002. On May 28, 2002, EPA sent a letter to IDEM deeming the February 1, 2002 submittal complete, and initiated processing of the request.

Indiana's February 1, 2002 submission consists of the addition to the SIP of: 326 IAC 2-2, PSD rules; 326 2-1.1-6, public notice; and 326 IAC 2-1.1-8, time periods for determination on permit applications. IDEM previously submitted sections 326 IAC 2-1.1-6 and

326 IAC 2-1.1-8, and, at EPA's request, resubmitted them as part of this SIP submittal request.

On January 15, 2003, EPA published a direct final rule conditionally approving IDEM's February 1, 2002 SIP submittal upon correction of a few minor deficiencies (68 FR 1970). On March 3, 2003 (68 FR 9892), EPA withdrew the direct final rule due to adverse comments, and published a final rule conditionally approving the submittal. On January 16, 2004, IDEM responded to the conditional approval by submitting corrections to the identified deficiencies.

### C. Approvability Analysis

In the January 15, 2003 direct final conditional approval and March 3, 2003 final conditional approval, EPA identified minor discrepancies between the Federal rule requirements (40 CFR part 51, subpart I) and the Indiana SIP that IDEM must correct before EPA could fully approve Indiana's PSD program. The following are changes incorporated by IDEM in its January 16, 2004 submittal and approved by EPA through this rulemaking.

In 326 IAC 2-2-1(y)(5), the words "and this subdivision" were superfluous and were, therefore, removed. In 326 IAC 2-2-1(gg), "U.S. EPA" was replaced with "IDEM." In 326 2-2-1(x)(E), the phrase "minor new source review regulations approved pursuant to 40 CFR 51.160 through 40 CFR 51.166" was added to a list of regulations exempting the use of an alternative fuel or raw material from the definition of a "major modification." In 326 IAC 2-2-6(b)(5), the words "whichever is later" were not necessary and, therefore, were removed. The date in 326 IAC 2-2-12, which provides an allowance for sources to request that IDEM rescind requirements in permits, was changed from January 1, 2002 to January 19, 2002. The date was intended to be the effective date of the Indiana PSD rule amendments, but since IDEM did not know at the time of final adoption what the actual effective date of the rule would be, an estimated date of January 1, 2002 was inserted. The actual effective date was January 19, 2002; this date is, therefore, being corrected through this action.

In addition to the changes described above, IDEM has also made a number of smaller revisions to 326 IAC 2-2 in its January 16, 2004 submittal that are more grammatical in nature. EPA believes that these changes do not significantly change the meaning of Indiana's rules and, therefore, approves these smaller changes as submitted.

## III. Final Rulemaking Action

EPA believes that Indiana's January 16, 2004 submittal adequately addressed issues raised in EPA's January 15, 2003 direct final conditional approval and the March 3, 2003 final conditional approval. In this rulemaking action, EPA is therefore approving the sections of Indiana's rules addressed in the Approvability Analysis above as a revision to the Indiana SIP for PSD.

EPA's approval of Indiana's PSD program does not divest EPA of the duty to continue appropriate oversight to insure that PSD determinations made by Indiana are consistent with the requirements of the CAA, Federal regulations and the SIP.

Today's approval of Indiana's SIP revision submission is limited to existing rules. EPA is taking no position on whether Indiana will need to make changes to its new source review rules to meet any requirements that EPA has or may promulgate as part of its new source review reform.

EPA views the approval of these revision to the Indiana PSD SIP as noncontroversial, and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing approval of the State Plan. Should adverse or critical written comments be filed, EPA will withdraw this direct final rule and address all public comments in a final rule based on the proposed rule published in the proposed rules section of this **Federal Register**. This approval action will be effective without further notice unless EPA receives relevant adverse written comment by June 21, 2004. Should EPA receive adverse or critical comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on July 19, 2004.

## IV. Statutory and Executive Order Reviews

### Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

### Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

For this reason, this action is also not subject to Executive Order 13211,

“Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001).

#### *Regulatory Flexibility Act*

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### *Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

#### *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### *Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves 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.

#### *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

#### *National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry our policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

#### *Civil Justice Reform*

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

#### *Governmental Interference With Constitutionally Protected Property Rights*

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order, and has determined that the rule’s requirements do not constitute a taking.

#### *Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### *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, EPA 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 action is not a “major rule” as defined by 5 U.S.C. 804(2).

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 July 19, 2004. 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, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 26, 2004.

#### **Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ For the reasons stated in the preamble, part 52, chapter I, of 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.*

■ 2. Section 52.770 is amended by adding paragraph (c)(165) to read as follows:

#### **§ 52.770 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(165) On January 16, 2004 Indiana submitted revised Prevention of Significant Deterioration rules as a revision to the Indiana State Implementation Plan.

(i) Incorporation by reference.

(A) Amendments to the Indiana Administrative Code, Title 326: Air Pollution Control Board; Article 2: Permit Review Rules; Rule 2: Prevention of Significant Deterioration (PSD) Requirements; Section 2–2–1 Definitions; Section 2–2–6 Increment

consumption; requirements; and Section 2–2–12 Permit rescission. Filed with the Secretary of State on March 9, 2004, effective April 8, 2004. Published at 27 Indiana Register 2216; April 1, 2004.

[FR Doc. 04–11337 Filed 5–19–04; 8:45 am]  
BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 151–0449a; FRL–7660–6]

**Revisions to the California and Nevada State Implementation Plans, Ventura County Air Pollution Control District and Clark County Department of Air Quality Management**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP) and the Clark County Department of Air Quality Management (CCDAQM) portion of the Nevada SIP. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving local rules that address Acid Deposition and the National Ambient Air Quality Standards (NAAQS).

**DATES:** This rule is effective on July 19, 2004, without further notice, unless EPA receives adverse comments by June 21, 2004. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted SIP revisions, EPA’s technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

- Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460
- California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 “I” Street, Sacramento, CA 95814
- Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003–5417
- Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 333 W. Nye Lane, Room 138, Carson City, NV 89706
- Clark County Department of Air Quality Management, 500 S. Grand Central Parkway, Las Vegas, NV 89155–5210

Copies of the VCAPCD and CCDAQM rules may also be available via the Internet at the following sites respectively, <http://www.arb.ca.gov/drdb/drdbtxt.htm> and [http://www.accessclarkcounty.com/air\\_quality/index.htm](http://www.accessclarkcounty.com/air_quality/index.htm). Please be advised that these are not EPA Web sites and may not contain the same versions of the rules that were submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Rose, EPA Region IX, (415) 947–4126, [rose.julie@epa.gov](mailto:rose.julie@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to EPA.

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**I. The States’ Submittal**

*A. What Rules Did the States Submit?*

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB) and the Nevada Department of Conservation and Natural Resources (NDCNR), respectively.

**TABLE 1.—SUBMITTED RULES**

Local agency	Rule/section #	Rule/section title	Adopted	Submitted
VCAPCD .....	34	Acid Deposition Control .....	03/14/95	05/24/95
CCDAQM .....	11	Ambient Air Quality Standards .....	10/07/03	10/23/03

On July 24, 1995, VCAPCD Rule 34 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. CCDAQM Section 11 was found to meet the completeness criteria on November 18, 2003.

*B. Are There Other Versions of These Rules?*

There are no previous versions of VCAPCD Rule 34 in the California SIP. We approved a version of CCDAQM Section 11 into the Nevada SIP on August 27, 1981. The CCDAQM adopted a revision to the SIP-approved version on October 7, 2003 and the NDCNR submitted the revision to EPA on October 23, 2003.

*C. What Is the Purpose of the Submitted Rules?*

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, sulfur dioxide and other air pollutants which harm human health and the environment. These rules were developed as part of the local agencies’ programs to control these pollutants.

VCAPCD Rule 34 adopts the CAA Title IV, Acid Rain Program by reference. The Acid Deposition Control program is designed to reduce the effects of acid rain through the reduction of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxide (NO<sub>x</sub>) emissions. Rule 34 accepts delegation of the federal

program which is currently being implemented as part of the District’s Federal Operating Permit Program. There are no Phase I facilities in Ventura County. There are two sources that qualify as Phase II sources in Ventura County: boilers at the Ormond Beach and Mandalay Generating Stations operated by Southern California Edison Company.

CCDAQM Section 11 lists the National Ambient Air Quality Standards and the State Ambient Air Quality Standards. Section 11 has been revised to include the new 8-hour ozone standard and the particulate matter 2.5 microns (PM–2.5) standard. The standard for ozone is 0.08 parts per million averaged during an 8-hour