

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Stoney Creek Technologies, LLC.	OP-16-010	Delaware	7/24/03	3/31/05 [Insert page number where the document begins].	52.2020(d)(1)(f)
Northeastern Power Company	54-0008	Schuylkill	5/26/95	3/31/05 [Insert page number where the document begins].	52.2020(d)(1)(f)
Koppers Industries, Inc	OP-41-0008	Lycoming	3/30/99	3/31/05 [Insert page number where the document begins].	52.2020(d)(1)(f)
Texas Eastern Transmission Corporation.	22-2100	Dauphin	1/31/97	3/31/05 [Insert page number where the document begins].	52.2020(d)(1)(f)
The Miller Group	54-0024	Schuylkill	2/1/99	3/31/05 [Insert page number where the document begins].	52.2020(d)(1)(f)
CNG Transmission Corporation.	32-000-129	Indiana	6/22/95	3/31/05 [Insert page number where the document begins].	52.2020(d)(1)(f)
I.H.F.P., Inc	OP-49-0010A	Northumberland	1/7/98	3/31/05 [Insert page number where the document begins].	52.2020(d)(1)(f)
National Forge Company	OP 62-032	Warren	5/31/95	3/31/05 [Insert page number where the document begins].	52.2020(d)(1)(f)
United Refining Company	OP 62-017	Warren	5/31/95 11/14/95	3/31/05 [Insert page number where the document begins].	52.2020(d)(1)(f)
Petrowax Refining	OP 42-110	McKean	3/4/96 5/31/96	3/31/05 [Insert page number where the document begins].	52.2020(d)(1)(f)
Westvaco Corporation	07-2008	Blair	9/29/95	3/31/05 [Insert page number where the document begins].	52.2020(d)(1)(f)

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 70**

[R07-OAR-2005-NE-0001; FRL-7894-1]

**Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Nebraska**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the State Implementation Plan (SIP) and Operating Permits Program submitted by the state of Nebraska. These revisions provide or incorporate rules for predictive emissions monitoring (PEMS) in Chapter 34, delete obsolete footnotes from Appendix III (relating to emissions inventories for hazardous air pollutants under the state's operating permit program), correct a mistakenly worded rule in Chapter 20 (relating to process weight rates for particulate matter from certain sources), and improve

understanding of Chapter 20 by consolidating the process weight rates into a single table. Approval of these revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's revised air program rules.

**DATES:** This direct final rule will be effective May 31, 2005, without further notice, unless EPA receives adverse comment by May 2, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R07-OAR-2005-NE-0001, by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. Agency Website: <http://docket.epa.gov/rmepub/>. RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the

system, select "quick search;" then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: [rios.shelly@epa.gov](mailto:rios.shelly@epa.gov).
4. Mail: Shelly Rios-LaLuz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

5. Hand Delivery or Courier. Deliver your comments to Shelly Rios-LaLuz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

*Instructions:* Direct your comments to RME ID No. R07-OAR-2005-NE-0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, 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 RME, regulations.gov,

or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are "anonymous access" systems, 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 RME or 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.

*Docket:* All documents in the electronic docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Shelly Rios-LaLuz at (913) 551-7296 or by e-mail at [rios.shelly@epa.gov](mailto:rios.shelly@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

- What is a SIP?
- What is the Federal approval process for a SIP?
- What does Federal approval of a state regulation mean to me?
- What is the Part 70 operating permits program?
- What is the Federal approval process for an operating permits program?
- What is being addressed in this document?

- What is EPA's analysis of the revisions?
- Have the requirements for approval of a SIP and Part 70 revision been met?
- What action is EPA taking?

#### What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

#### What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

#### What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

#### What Is the Part 70 Operating Permits Program?

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM<sub>10</sub>; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revision to the state and local agencies operating permits program are also subject to public notice, comment, and our approval.

#### What Is the Federal Approval Process for an Operating Permits Program?

In order for state regulations to be included in the Federally-enforceable Title V operating permits program, states must formally adopt regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing,

public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the approved operating permits program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA, including revisions to the state program, are included in the Federally-approved operating permits program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled "Approval Status of State and Local Operating Permits Programs."

#### **What Is Being Addressed in This Document?**

On June 4, 2004, we received a request from the state of Nebraska to approve revisions to Nebraska's State Implementation Plan and Part 70 Operating Permits Program. These revisions were adopted by the Nebraska Department of Environmental Quality (NDEQ) on June 6, 2003, and on September 4, 2003. This action addresses rule revisions to Title 129—Nebraska Air Quality Regulations, Chapters 20 and 34 and Appendix III. The purpose of these revisions are to: (a) Provide or incorporate rules for Predictive Emissions Monitoring Systems (PEMS) in Chapter 34; (b) delete, from Appendix III, obsolete footnotes which described the uses of the various hazardous air pollutants listed in the appendix; (c) correct a mistakenly worded rule in Chapter 20 (which establishes emissions rates for particulates from certain industrial processes); and (d) improve understanding of Chapter 20 by consolidating various process weight rates into a single table.

#### **What Is EPA's Analysis of the Revisions?**

The addition of regulations governing PEMS introduces regulatory requirements under which Predictive Emissions Monitoring may be used in the state of Nebraska. The Nebraska Department of Environmental Quality determined that the use of PEMS is an appropriate alternative to Continuous Emissions Monitoring in some instances. The rule allows the state to require PEMS under certain circumstances described in the rule. The rule, which is applicable to sources

subject only to various implementation plan requirements (and not to federally promulgated requirements such as New Source Performance Standards (40 CFR Part 60)) requires that alternative PEMS monitoring be approved by the state and EPA. Because of the limitations and safeguards included in the rule, EPA believes that it is acceptable.

The re-formatting of sections 002 and 003 in Chapter 20 resulted in a renumbering of these sections. The consolidation of the emissions rates in Chapter 20 does not change any of the emissions rates but only clarifies them.

The changes in Appendix III relate to emission inventory reporting for Hazardous Air Pollutants (HAPs). Although these modifications include minor technical amendments to how emissions are reported, they do not change previous reporting requirements for HAPs. These changes are not substantive, thus we are approving these changes.

For the reasons stated above, we have determined that the revisions to Nebraska's State Implementation Plan and to the Operating Permits Program described above should be approved. In this action, we are not acting on Title 129, Chapter 34, Section 005 relating to continuous emissions monitoring for certain sources subject to SIP requirements. NDEQ had revised this rule in a manner which is inconsistent with EPA requirements (40 CFR part 51, appendix P). As a result, NDEQ determined that this provision should be further revised to be consistent with the Federal rule and will submit a revision to its rulemaking council in the near future. EPA will act on this rule when it is revised, in a separate rulemaking. In this action we are also not acting on Title 129, Chapter 42 relating to Permits-by-Rule. NDEQ has made revisions to this chapter and will be submitting them in the near future. Action on Chapter 42 will be taken at a future date.

#### **Have the Requirements for Approval of a SIP and Part 70 Revision Been Met?**

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations. The revision also meets the applicable requirements of Title V and EPA regulations for

revision to the operating permits program.

#### **What Action Is EPA Taking?**

We are approving, as an amendment to the Nebraska SIP, revisions to Title 129, Chapters 20 and 34 (with the exception of Chapter 34, section 005) as described in this rule. We are also approving, as a program revision to the state's part 70 Operating Permits Program, revisions to Title 129, Appendix III. Revisions to Title 129, Chapter 20 became effective February 7, 2004, and revisions to Title 129, Chapter 34 and Appendix III became effective November 24, 2003. In this action we are not acting on Title 129, Chapter 42 relating to Permits-by-Rule.

EPA is processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

#### **Statutory and Executive Order Reviews**

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. 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). 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.*). 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 (Pub. L. 104-4).

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). 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 CAA. 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.

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not

apply. 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.*).

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 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 May 31, 2005. 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**

*40 CFR Part 52*

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

*40 CFR Part 70*

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: March 21, 2005.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

■ 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 CC—Nebraska**

■ 2. In § 52.1420 the table in paragraph (c) is amended by revising the entries for 129–20 and 129–34 to read as follows:

**§ 52.1420 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED NEBRASKA REGULATIONS**

Nebraska citation	Title	State effective date	EPA approval date	Explanation
<b>State of Nebraska Department of Environmental Quality</b>				
<b>Title 129—Nebraska Air Quality Regulations</b>				
129–20 .....	Particulate Emissions; Limitations and Standards (Exceptions Due to Break-downs or Scheduled Maintenance: See Chapter 35).	2/7/04	3/31/05, [insert FR page number where the document begins].	
* * * * *				
129–34 .....	Emission Sources; Testing; Monitoring	11/24/03	3/31/05, [insert FR page number where the document begins].	Section 005 is not SIP approved.
* * * * *				

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**PART 70—[AMENDED]**

■ 1. The authority citation for Part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Appendix A—[Amended]**

■ 2. Appendix A to Part 70 is amended by adding paragraph (h) under Nebraska;

City of Omaha; Lincoln-Lancaster County Health Department to read as follows:

**Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs**

\* \* \* \* \*

Nebraska; City of Omaha; Lincoln-Lancaster County Health Department

\* \* \* \* \*

(h) The Nebraska Department of Environmental Quality approved a revision to NDEQ Title 129, appendix III, on November 19, 2003, which became effective November 24, 2003. This revision was submitted on June 4, 2004. We are approving this program revision effective May 31, 2005.

\* \* \* \* \*

[FR Doc. 05-6369 Filed 3-30-05; 8:45 am]

**BILLING CODE 6560-50-P**