

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2008-0538; FRL-9632-7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting full approval of Missouri's attainment demonstration State Implementation Plan (SIP) and control strategy for the lead National Ambient Air Quality Standard (NAAQS) nonattainment area of Herculaneum, Missouri. This action is based on a proposed conditional approval of the SIP published on October 8, 2008, and a proposed approval of the supplemental SIP submittal received by EPA on September 3, 2009, published in the **Federal Register** on August 27, 2010. The applicable standard addressed in this action is the lead NAAQS promulgated by EPA in 1978. EPA has determined that both SIP submittals from the State of Missouri satisfy the applicable requirements of the Clean Air Act (CAA or Act) and demonstrates attainment of the 1.5 microgram per cubic meter ($\mu\text{g}/\text{m}^3$) lead NAAQS in the Herculaneum, Missouri area. This action does not address the obligations which Missouri has relative to the revised lead NAAQS promulgated by EPA in 2008.

DATES: This final rule is effective on March 19, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2008-0538. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (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 through www.regulations.gov 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:

Stephanie Doolan at (913) 551-7719, or by email at doolan.stephanie@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document "we," "us," or "our" refer to EPA.

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I. Background

EPA established NAAQS for lead on October 5, 1978 (43 FR 46246). The 1978 NAAQS for lead is set at a level of $1.5 \mu\text{g}/\text{m}^3$ of air, averaged over a calendar quarter. The Herculaneum, Missouri area is designated nonattainment for the 1978 lead NAAQS. The area is also designated nonattainment for the lead NAAQS promulgated by EPA in 2008, published on November 12, 2008 (73 FR 66964). The action which is the subject of today's notice addresses only the State's obligations regarding the 1978 standard. A SIP addressing the 2008 standard is due no later than June 30, 2012.

A. SIP Call

From 2002 to 2005, ambient air monitors in the Herculaneum area monitored attainment of the 1978 lead NAAQS for 10 consecutive calendar quarters. Despite implementation of all contingency measures specified by the approved 2002 SIP (67 FR 18497), in the first two quarters of 2005, air quality monitors in the area recorded violations of the 1978 lead NAAQS, which is $1.5 \mu\text{g}/\text{m}^3$ lead. Because of these violations of the 1978 lead NAAQS, EPA proposed and subsequently finalized a SIP Call on April 14, 2006 (71 FR 19432). The SIP Call notified the State of EPA's finding that the SIP was substantially inadequate to provide for attainment and maintenance of the lead NAAQS in Herculaneum, and required the State to submit a revised SIP within 12 months of the finding.

B. Proposed Conditional Approval

On May 31, 2007, EPA received Missouri's revised SIP dated April 26, 2007, for the Herculaneum area. MDNR submitted supplemental information to EPA on March 19, 2008. The 2007 SIP submission addressed most of the

criteria set forth in the SIP Call, with the exception that process ventilation requirements had not yet been established. On October 8, 2008, EPA proposed conditional approval of Missouri's SIP submissions for May 31, 2007, and March 19, 2008 (73 FR 58913), pending the establishment of enforceable ventilation requirements. The reader should refer to the proposed conditional approval for a detailed discussion of the 2007 SIP submittal, and the rationale for proposing to approve it with conditions.

C. Supplemental Proposal

On September 3, 2009, EPA received the SIP revision addressing ventilation controls, following adoption by the Missouri Air Conservation Commission on July 29, 2009. EPA determined that the SIP revision contains enforceable ventilation conditions to ensure adequate building particle capture. On August 27, 2010, EPA proposed full approval of Missouri's SIP, including the May 31, 2007, SIP submittal; the March 19, 2008, supplemental information; and the September 3, 2009, supplemental SIP revision; to bring Herculaneum into attainment of the 1978 lead NAAQS (75 FR 52701). A detailed rationale for the proposed approval was included in the August 27, 2010, supplemental proposal.

II. EPA Review of the State Submittal

The October 8, 2008, proposed conditional approval contains an extensive description of the operation of the smelter, and a discussion of Missouri's SIP. The proposed conditional approval includes a discussion of air dispersion model selection, and meteorological and emissions inventory input data, among other elements. The control strategy and contingency measures are incorporated into the 2007 Consent Judgment between Missouri and Doe Run. For more information on these elements, and EPA's analysis of them, please refer to the October 8, 2008 **Federal Register** (73 FR 58913) and associated docket.

The September 3, 2009, SIP revision addressing building ventilation requirements, supplements the May 2007 SIP submission. Ventilation controls include flow rate and fan amperage limits for the Sinter Plant, Blast Furnace Building, and Refinery Building that result in a minimum inflow of air at all openings (e.g., doors) to demonstrate that each building is under negative pressure. The 2009 supplemental SIP revision includes the revised Work Practices Manual, as well as the Consent Judgment amended to include the ventilation controls,

associated implementation schedules, and contingency measures. The 2009 amended Consent Judgment and Work Practices Manual are enforceable documents included in Missouri's SIP submittal, and, by virtue of this approval, are Federally enforceable as well. For additional information on these elements, please refer to the August 27, 2010, **Federal Register** (75 FR 52701) and associated docket.

MDNR has revised the Work Practices Manual to include the additional recordkeeping, compliance monitoring, and corrective action requirements associated with building ventilation. The facility is required to measure flow rates once per minute using an automatic data logging system and to conduct an inflow test of all applicable doors and openings each calendar quarter. Doe Run must submit quarterly reports to MDNR summarizing any violations of flow rate and amperage requirements, and corrective actions taken. Finally, if an ambient air quality monitor in Herculaneum exceeds 1.4 $\mu\text{g}/\text{m}^3$ of lead, the facility must conduct a fluid modeling study of flow patterns within process buildings to determine whether additional ventilation controls are appropriate.

In addition to the ventilation control requirements, the Work Practices Manual has also been revised to prohibit construction when temperatures are below 39 degrees Fahrenheit. During the first quarter of 2008, the facility monitored a violation of the 1978 lead NAAQS primarily due to in-plant road dust from construction equipment activities during periods of time when the watering system at the plant was not operating. Limiting construction when the plant watering system cannot be operated for dust suppression is expected to decrease the lead concentrations in ambient air.

EPA has determined that the September 3, 2009, supplemental SIP revision contains the necessary enforceable conditions for ventilation-related control measures. EPA described its analysis of these ventilation requirements in the supplemental proposal, and incorporates its analysis in this final action.

The Main Street monitor operated by MDNR is the closest ambient air monitor to the Herculaneum facility. Since the first quarter of 2008, the Main Street monitor has reported 12 consecutive quarterly averages, or three years, of lead concentrations that attain the 1978 lead NAAQS (1.5 $\mu\text{g}/\text{m}^3$). Lead concentrations measured by MDNR at the Main Street monitor from the second quarter of 2008 to the present range from 0.662 $\mu\text{g}/\text{m}^3$, reported for October

through December of 2009, to 1.124 $\mu\text{g}/\text{m}^3$, reported for July through September 2009.

Modeling conducted by MDNR as a part of its 2007 SIP attainment demonstration predicts an ambient lead concentration of 1.49 $\mu\text{g}/\text{m}^3$ at the facility fence line. A comparison of the SIP attainment demonstration modeling with the measured ambient lead concentrations over the past three years, described above, indicates that the model conservatively predicts ambient lead concentrations and provides further assurance that the control strategy provides for attainment of the 1978 lead NAAQS.

III. Comments and Responses

A. Comments Received

EPA received one set of comments from Doe Run on its October 8, 2008, proposed conditional approval of Missouri's SIP submission (73 FR 58913). EPA is responding to this set of comments in this final action. EPA did not receive any comments on the supplemental proposed rule.

On November 7, 2008, Doe Run commented that EPA should grant full approval of the 2007 Missouri SIP submittal for attainment of the 1978 lead NAAQS at the Herculaneum facility. The basis of this comment was:

1. Doe Run proceeded to install and implement the controls and measures specified by the 2007 SIP submission even though EPA had not approved the SIP;

2. EPA points to no specific SIP deficiency under section 110 of the CAA in its proposal to conditionally rather than fully approve the SIP submittal;

3. It is unnecessary for EPA to further delay final and full approval to ensure the enforceability of the SIP submittal;

4. The buildings included in the ventilation study upon which final approval is predicated have been and continue to maintain adequate inflow and building closures control fugitive emissions as intended by the SIP submittal; and

5. The modeling demonstration supports full approval.

B. EPA Response

In this action, EPA is granting full approval to the Missouri SIP submittal (consisting, as stated previously, of the initial 2007 submittal, the 2008 supplemental information, and the 2009 supplemental SIP revision) so that the comment requesting full approval of the prior submission is no longer relevant. However, we note that EPA initially proposed conditional approval of the SIP submittal based on the requirement

of section 110(a)(2)(A) of the CAA which states that SIPs shall include enforceable emission limitations and other control measures that may be necessary or appropriate to meet the applicable requirements of the CAA. Until the 2009 supplemental SIP revision was received, the ventilation controls, which are a necessary part of the emission reduction strategy for attaining the 1978 lead NAAQS, were not permanent and enforceable. With this final action, the obligation to continue to meet these requirements is now mandated by the SIP, as required by section 110(a)(2)(A).

IV. Final Action

This rulemaking takes final action to approve the Missouri SIP containing control measures to bring the Herculaneum area into attainment with the 1978 lead NAAQS (1.5 $\mu\text{g}/\text{m}^3$). The 2007 SIP submittal, 2008 supplemental information, and the 2009 supplemental SIP revision (which includes the revised Work Practices Manual and the 2007 Missouri Consent Judgment with the 2009 amendment to include enforceable ventilation control requirements) together demonstrate attainment of the 1978 lead NAAQS and fulfill the requirements of the CAA. EPA notes that although this SIP revision is directionally correct in terms of achieving reductions in lead emissions, the State remains obligated to submit a SIP to attain the 2008 lead NAAQS.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that the Administrator determines to be in compliance with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this final action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country

located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 April 17, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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

Air pollution control, Environmental protection, Incorporation by reference, Lead, Reporting and recordkeeping requirements.

Dated: February 6, 2012.

Karl Brooks,
Regional Administrator, Region 7.

40 CFR part 52 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 AA—Missouri

- 2. In § 52.1320:
 - a. The table in paragraph (d) is amended by adding entry (25) in numerical order; and
 - b. The table in paragraph (e) is amended by adding entry (56) in numerical order to read as follows:

§ 52.1320 Identification of plan.

* * * * *
(d) * * *

EPA-APPROVED MISSOURI SOURCE-SPECIFIC PERMITS AND ORDERS

| Name of source | Order/permit number | State effective date | EPA approval date | Explanation |
|------------------------------|--|------------------------------------|---|---|
| * * * * * | | | | |
| (25) Doe Run Herculaneum, MO | Consent Judgment Modification 07JE–CC00552. | 5/21/07 7/29/09 modification | 2/17/12 [<i>insert FR page number where the document begins</i>]. | This approval does not include any subsequent modifications after 2009. |

* * * * * (e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

| Name of nonregulatory SIP provision | Applicable geographic or nonattainment area | State submittal date | EPA approval date | Explanation |
|---|---|----------------------|---|-------------|
| * * * * * | | | | |
| (56) CAA Section 110(a)(2) SIP—1978 Pb NAAQS. | City of Herculaneum, MO | 7/29/09 | 2/17/12 [<i>insert FR page number where the document begins</i>]. | |

[FR Doc. 2012-3699 Filed 2-16-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-HQ-OAR-2011-0572; FRL-9624-3]

RIN-2060-AR06

Air Quality Designations for the 2010 Primary Nitrogen Dioxide (NO₂) National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes air quality designations for all areas in the United States for the 2010 Primary Nitrogen Dioxide (NO₂) National Ambient Air Quality Standards (NAAQS). Based on air quality monitoring data, the EPA is issuing this rule to designate all areas of the country as “unclassifiable/attainment” for the 2010 NO₂ NAAQS. The EPA is designating areas as “unclassifiable/attainment” to mean that available information does not indicate that the air quality in these areas exceeds the 2010 NO₂ NAAQS.

DATES: The effective date of this rule is February 29, 2012.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2011-0572. All documents in the docket are listed in the index at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (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 the docket or in hard copy at the Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566-1742.

In addition, the EPA has established a Web site for this rulemaking at: <http://www.epa.gov/air/nitrogenoxides/designations>. The Web site includes the EPA’s final state and tribal designations, as well as state initial recommendation letters, the EPA modification letters, technical support documents, responses to comments and other related technical information.

FOR FURTHER INFORMATION CONTACT: Doug Solomon, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-04, Research Triangle Park, NC 27711, phone number (919) 541-4132 or by email at: solomon.douglas@epa.gov; or Rhea Jones, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-04, Research Triangle Park, NC 27711, phone number (919) 541-2940 or by email at: jones.rhea@epa.gov.

SUPPLEMENTARY INFORMATION:

Regional Office Contacts

- Region I—Alison Simcox (617) 918-1684,
- Region II—Kenneth Fradkin (212) 637-3702,
- Region III—Maria Pino (215) 814-2181,
- Region IV—Steve Scofield (404) 562-9034,
- Region V—John Summerhays (312) 886-6067,
- Region VI—Joe Kordzi (214) 665-7186,
- Region VII—Amy Algoe-Eakin (913) 551-7942,
- Region VIII—Catherine Roberts (303) 312-6025,
- Region IX—Eleanor Kaplan (415) 972-4147,
- Region X—Krishna Viswanathan (206) 553-2684.

The public may inspect the rule and state-specific technical support information at the following locations:

| Regional offices | States |
|--|--|
| Dave Conroy, Chief, Air Programs Branch, EPA New England, 1 Congress Street, Suite 1100, Boston, MA 02114-2023, (617) 918-1661. Raymond Werner, Chief, Air Programs Branch, EPA Region 2, 290 Broadway, 25th Floor, New York, NY 10007-1866, (212) 637-3706. Cristina Fernandez, Branch Chief, Air Quality Planning Branch, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103-2187, (215) 814-2178. | Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. New Jersey, New York, Puerto Rico, and Virgin Islands. |
| R. Scott Davis, Branch Chief, Air Planning Branch, EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW., 12th Floor, Atlanta, GA 30303, (404) 562-9127. | Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia. |
| John Mooney, Chief, Air Programs Branch, EPA Region 5, 77 West Jackson Street, Chicago, IL 60604, (312) 886-6043. | Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. |
| Guy Donaldson, Chief, Air Planning Section, EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202, (214) 665-7242. | Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. |
| Joshua A. Tapp, Chief, Air Programs Branch, EPA Region 7, 901 North 5th Street, Kansas City, Kansas 66101-2907, (913) 551-7606. | Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. |
| Monica Morales, Leader, Air Quality Planning Unit, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129, (303) 312-6936. | Iowa, Kansas, Missouri, and Nebraska. |
| Lisa Hanf, Air Planning Office, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3854. | Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. |
| Krishna Viswanathan, Manager, State and Tribal Air Programs, EPA Region 10, Office of Air, Waste, and Toxics, Mail Code OAQ-107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553-2684. | American Samoa, Arizona, California, Guam, Hawaii, Nevada, and Northern Mariana Islands. Alaska, Idaho, Oregon, and Washington. |

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