

40 CFR Part 52

[IN64-1a; FRL-5662-7]

Approval and Promulgation of Implementation Plans; Indiana**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: On November 21, 1995, the State of Indiana submitted to EPA a rule for control of Non-Methane Organic Compounds (NMOC) emissions from municipal solid waste (MSW) landfills in Clark, Floyd, Lake, and Porter Counties, as a requested revision to the ozone State Implementation Plan (SIP). This rule is part of the State's 15 percent (%) Rate of Progress (ROP) plan to control Volatile Organic Compound (VOC) emissions in Clark and Floyd Counties, and is included in the VOC contingency plan for Lake and Porter Counties. Emissions of VOC react with nitrogen oxides in sunlight to form ground-level ozone, commonly known as smog. Exposure to high ozone concentrations causes respiratory irritation, especially to children, seniors, and people with asthma and other respiratory problems. Indiana expects that the control measures specified in this MSW landfills SIP will reduce VOC emissions by 1,132 pounds per day (lbs/day) in Lake and Porter Counties and 345 lbs/day in Clark and Floyd Counties. In this action, EPA is approving Indiana's rule as a direct final action; the rationale for this approval is set forth below. Elsewhere in this Federal Register, EPA is proposing approval and soliciting comment on this direct final action; if adverse comments are received, EPA will withdraw the direct final and address the comments received in a new final rule. Unless this direct final is withdrawn, no further rulemaking will occur on this requested SIP revision.

DATES: The "direct final" is effective on March 18, 1997, unless EPA receives adverse or critical comments by February 18, 1997. If the effective date is delayed, timely notification will be published in the Federal Register.

ADDRESSES: Copies of the revision request are available for inspection at the following address: Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Francisco J. Acevedo at (312) 886-6082 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation

Development Section, Air Programs Branch (AR-18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo at (312) 886-6061.

SUPPLEMENTARY INFORMATION:**I. Submittal Background**

Section 182(b)(1) of the Clean Air Act (the Act) requires all moderate and above ozone nonattainment areas to achieve a 15% reduction of 1990 emissions of VOC by November 15, 1996. In Indiana, Lake and Porter Counties are classified as "severe" nonattainment for ozone, while Clark and Floyd Counties are classified as "moderate" nonattainment. As such, these counties are subject to the 15% ROP requirement.

The Act specifies under section 182(b)(1)(C) that the 15% emission reduction claimed under the ROP plan must be achieved through the implementation of control measures through revisions to the SIP, the promulgation of federal rules, or the issuance of permits under Title V of the Act, by November 15, 1996. Control measures implemented before November 15, 1990, are precluded from counting toward the 15% reduction.

In addition, section 172(c)(9) requires moderate areas to adopt contingency measures by November 15, 1993. The *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990* (April 28, 1992, 57 FR at 18070), states that the contingency measures generally must provide reductions of 3% from the 1990 base-year inventory. While all contingency measures must be fully adopted rules or measures, the State can use these measures in two different ways. First, the State can use its discretion to implement a measure it wants before 1996. Alternatively, the State may decide not to implement a measure until the area has failed to either meet the 15% ROP requirement or attain the national ambient air quality standards. In that situation, the reductions must be achieved in the year following that in which the failure has been identified by the State.

On November 21, 1995, and February 14, 1996, Indiana submitted 326 IAC 8-8 as its MSW landfill rules for the control of NMOC, which include VOCs and hazardous air pollutants, as a requested revision to the ozone SIP. This rule establishes emission standards and guidelines which require certain MSW landfills to control emissions from landfills by installing a landfill gas collection and control system that either

incinerates or recovers the gas. This rule is intended to be part of the 15% ROP plan for Clark and Floyd Counties, as well as included in the contingency plan for Lake and Porter Counties. (Rulemaking on the overall Clark and Floyd Counties 15% ROP plan and Lake and Porter Counties contingency plan SIP revisions will be taken in a subsequent Federal Register action).

On July 12, 1995, the Indiana Air Pollution Control Board (IAPCB) adopted the MSW landfill rule. Public hearings on the rule were held on October 5, 1994 and July 12, 1995, in Indianapolis, Indiana. The rule was filed with the Secretary of State on December 19, 1995, and became effective on January 18, 1996; it was published in the Indiana State Register on February 1, 1996. The IDEM formally submitted the MSW landfill rule to EPA on November 21, 1995, as a revision to the Indiana SIP for ozone; supplemental documentation to this revision was submitted on February 14, 1996. EPA made a finding of completeness of the SIP submittals in a letter dated February 23, 1996.

The November 21, 1995, and February 14, 1996, submittals include the following rules:

*326 Indiana Air Code (IAC) 8-8
Municipal Solid Waste Landfills*

- (1) Applicability
- (2) Definitions
- (3) Requirements; incorporation by reference of federal standards
- (4) Compliance deadlines

The rule establishes NMOC control requirements for new and existing municipal solid waste landfills in Clark, Floyd, Lake, and Porter Counties. Indiana generally based its rules upon EPA's proposed MSW Landfill Standards of Performance for New Stationary Sources (NSPS) and Guidelines for Control of Existing Sources (EG), published in the Federal Register on May 30, 1991 (56 FR 24468).

II. Evaluation of Submittal

As previously discussed, Indiana intends that this MSW Landfill SIP revision submittal will be one of the control measures under 15% ROP plan for Clark and Floyd Counties, and included in the contingency plan for Lake and Porter Counties. A review of what emission reduction this SIP achieves for purposes of the Indiana 15% ROP plan will be addressed when EPA takes rulemaking action on the Clark and Floyd Counties 15% ROP plan and Lake and Porter Counties contingency plan SIPs. (EPA will take rulemaking on these plans in a subsequent rulemaking action).

To determine the approvability of the Indiana MSW landfills SIP, the rule was reviewed for its consistency with the Act, including EPA's proposed and final MSW landfill rules published in the Federal Register on March 12, 1996 (61 FR 9905). A summary of the rule and discussion of EPA's analysis follows. For the complete requirements of this SIP revision, interested parties should see the 326 IAC 8-8 rule.

a. Applicability

The rule's applicability criteria in section 1 provide that new and existing MSW landfills located in the subject counties are subject to the requirements of this rule if such operations emit greater than fifty-five (55) tons per day of non-methane organic compound, or if such landfills have a minimum design capacity of one hundred eleven thousand (111,000) tons (one hundred thousand (100,000) megagrams (Mg)) of solid waste.

For purposes of this rule, "Existing municipal solid waste (MSW) landfill" is defined in section 2(c) to mean an existing MSW landfill that has accepted waste since November 8, 1987, or that has capacity available for future use and for which construction commenced prior to the effective date of the State rule (January 18, 1996). It may be active, which means it either is currently accepting waste, or it is having additional capacity to accept waste. Or, an existing landfill may be closed, which means it is no longer accepting waste or it does not have available capacity for future waste deposition. "New MSW landfill" is defined in section 2(d) to mean a landfill for which construction, modification, or reconstruction commences on or after the effective date of the State rule.

The applicability criteria in section 1 clearly indicate the industry and activities subject to the rule. The rule's applicability criteria therefore, are approvable.

b. Definitions

The rule's definitions are found in section 2 of the State rule. Section 2(a) states that, for purpose of the State landfill rule, the definitions listed in EPA's proposed rule (56 FR 24468, May 30, 1991) shall apply. The only exemptions to the above is the definition of "Administrator" and "U.S. Environmental Protection Agency". Section 2(b)(1) defines "Administrator" as the commissioner of IDEM, and "U.S. EPA" as the IDEM for the purpose of this rule. The only other definitions listed in this section are "Existing municipal solid waste (MSW) landfill" and "New MSW landfill". Both

definitions are discussed above in the applicability section. The definition section accurately describes the MSW Landfill industry and therefore, is approvable.

c. Compliance Dates

Section 4 of the Indiana MSW landfill rule requires that landfills meeting the requirements of this rule shall comply with section 3 of the rule by no later than May 1, 1996.

d. Compliance Procedures, Record Keeping, and Reporting

In Section 3(a) of the Indiana rule, the State air pollution control board has incorporated by reference the following provisions from EPA's May 30, 1991, proposed New Source Performance Standard (NSPS) and Emission Guideline (EG) for MSW landfills: (1) Standards for air emissions from MSW landfills; (2) Test methods and procedures; (3) Compliance provisions; (4) Monitoring operations; (5) Reporting requirements; (6) Record-keeping requirements; and (7) Design specifications for active vertical collection systems. (In addition to the above provisions, Indiana needs to submit additional rulemaking by December 12, 1996, to address subsequent requirements contained in EPA's final MSW Landfill rule published March 12, 1996, in the Federal Register, regarding statewide control of emissions from certain MSW landfill sources.)

Section 3(b) of the State rule explains that all changes to MSW landfills made under this rule constitute minor modifications under IDEM's solid waste permitting program and must be made in accordance with the minor permit modification requirements under 329 IAC 2-8-11 and the applicable fees as specified in IC 13-7-16.1-2(g). Compliance with the requirements of this rule is also subject to the provisions of 326 IAC 2-1, Air Permitting Rules.

III. Final Action

Based upon the analysis above, the EPA finds that Indiana's rule covering MSW landfill operations, 326 IAC 8-8, as submitted on November 21, 1995, and February 14, 1996, is consistent with Federal requirements. EPA, therefore, is approving this SIP revision submittal for the Counties of Lake, Porter, Clark, and Floyd. (In addition to the rule approved by this action, Indiana will need to submit additional rules, by December 12, 1996, to address subsequent requirements contained in EPA's final MSW Landfill rule published March 12, 1996, in the Federal Register, regarding control of

emissions from such sources in other counties statewide.)

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on March 18, 1997 unless, by February 18, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The 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. If no such comments are received, the public is advised that this action will be effective on March 18, 1997.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities

with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. EPA.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with 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. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of

such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: November 25, 1996.

Valdas V. Adamkus,
Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

2. Section 52.770 is amended by adding paragraph (c)(110) to read as follows:

§ 52.770 Identification of Plan.

* * * * *

(c) * * *

(110) On November 21, 1995, and February 14, 1996, Indiana submitted Municipal Solid Waste (MSW) Landfill rules for Clark, Floyd, Lake, and Porter Counties as a revision to the State Implementation Plan. This rule requires MSW landfills that emit greater than fifty-five tons per day of non-methane organic compound, or that have a minimum design capacity of one hundred eleven thousand tons (one hundred thousand megagrams) of solid waste, to install a landfill gas collection and control system that either incinerates the gas or recovers the gas for energy use.

(i) *Incorporation by reference.* 326 Indiana Administrative Code 8-8 Municipal Solid Waste Landfills, Section 1 Applicability, Section 2 Definitions, Section 3 Requirements; incorporation by reference of federal standards, Section 4 Compliance deadlines. Adopted by the Indiana Air Pollution Control Board July 12, 1995. Filed with the Secretary of State December 19, 1995. Published at Indiana Register, Volume 19, Number 5, February 1, 1996. Effective January 18, 1996.

[FR Doc. 97-1080 Filed 1-16-97; 8:45 am]

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40 CFR Part 52

[IN63-1a; FRL-5663-1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 21, 1995, and February 14, 1996, the State of Indiana submitted rules for the control of volatile organic liquid (VOL) storage operations in Clark, Floyd, Lake, and Porter Counties as a requested State Implementation Plan (SIP) revision. This rule is part of the State's 15 percent (%) Rate of Progress (ROP) plan to control Volatile Organic Compounds (VOC) emissions in Clark and Floyd Counties, and is included in the VOC contingency plan for Lake and Porter Counties. In addition, this rule is intended to satisfy Clean Air Act (Act) requirements to adopt VOC Reasonably Available Control Technology (RACT) rules for non-Control Techniques Guidelines (CTG) sources in Clark, Floyd, Lake, and Porter Counties. Emissions of VOC react with nitrogen oxides in sunlight to form ground-level ozone, commonly known as smog. Exposure to high ozone concentrations causes respiratory irritation, especially to children, seniors, and people with asthma and other respiratory problems. Indiana expects that the control measures specified in this VOL storage SIP will reduce VOC emissions by 2,620 pounds per day (lbs/day) in Lake and Porter Counties and 142 lbs/day in Clark and Floyd Counties. In this action, EPA is approving Indiana's rule as a direct final action; the rationale for this approval is set forth below. Elsewhere in this Federal Register, EPA is proposing approval and soliciting comment on this direct final action; if adverse comments are received, EPA will withdraw the direct final and address the comments received in a new final rule. Unless this direct final is withdrawn, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective March 18, 1997 unless adverse comments are received by February 18, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments can be mailed to:

J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), Air and Radiation Division, U.S. Environmental