

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[MN65-01-7290a; FRL-6712-7]

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

**SUMMARY:** This action approves a State Implementation Plan (SIP) revision for the State of Minnesota which was submitted on December 7, 1999. This SIP revision is to remove an Administrative Order and replace it with a federally enforceable State operating permit for Commercial Asphalt's facility located on Red Rock Road in the city of St. Paul. The accompanying support documents for the Administrative Order, such as the air dispersion modeling, remain in the SIP as they are now.

If EPA receives adverse comments on this action, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**DATES:** This rule will be effective September 11, 2000, unless EPA receives adverse or critical comments by August 11, 2000. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Send written comments to Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), United Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Christos Panos, at (312) 353-8328 before visiting the Region 5 Office.)

A copy of these SIP revisions is available for inspection at this Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, (202) 260-7548.

**FOR FURTHER INFORMATION CONTACT:** Christos Panos, Regulation Development Section (AR-18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328.

**SUPPLEMENTARY INFORMATION:** This Supplementary Information section is organized as follows:

- B. Why was this SIP Revision Submitted?
- C. What Changes will this Revision Create?
- D. What is a Federally Enforceable State Operating Permit and How does it Work?
- E. What is an Administrative Order?
- F. How are Administrative Orders Replaced by Federally Enforceable State Operating Permits?
- G. What is EPA's Final Determination?

**A. What Action Is EPA Taking?**

In this action EPA is approving the revision to Minnesota's SIP to remove Commercial Asphalt's Administrative Order from the SIP and replace it with a federally enforceable State operating permit.

**B. Why Was This SIP Revision Submitted?**

This action is intended to streamline the permitting process in Minnesota and, thereby, reduce the permitting burden both on sources within the State and on the Minnesota Pollution Control Agency (MPCA).

**C. What Changes Will This Revision Create?**

The only thing changing in the SIP is the enforceable document from the Administrative Order to the federally enforceable State operating permit.

**D. What Is a Federally Enforceable State Operating Permit and How Does It Work?**

On May 2, 1995, the MPCA's revised operating permit rule was approved by EPA as a federally enforceable State operating permit program (FESOP) (60 FR 21447). Two things make the process of allowing State permits to act as the enforceable documents containing SIP requirements possible in Minnesota.

First, Minnesota's operating permit program requires all State permits, not only Title V permits, to contain all applicable requirements. Second, permits submitted as site-specific SIPs will have non-expiring SIP conditions (denoted as "Title I conditions"). For Federal approvability, any State requirement that is submitted as a revision to the federally enforceable SIP must be non-expiring or permanent.

EPA approved the use of the term "Title I condition" and its use as indicating that a condition will not expire even if the permit containing that condition expires. The use of the term, "Title I condition" in State operating permits or, subsequently, Title V permits, makes the requirements permanent, and allows Minnesota the use of State operating permits or Title V permits as vehicles for SIP conditions. The State defines "Title I conditions" as:

"Any condition based on a source specific determination of ambient impacts imposed for the purpose of achieving or maintaining attainment with the national ambient air quality standard and which was part of a SIP approved by EPA or submitted to EPA and pending approval under section 110 of the ACT."

All SIP requirements in Commercial Asphalt's permit are cited as "Title I condition" SIP for PM10.

**E. What Is an Administrative Order?**

MPCA has and non-expiring Administrative Orders as the federally enforceable documents in nonattainment SIPs. An Administrative Order contains the emission limits, operating conditions, monitoring, recordkeeping, and reporting requirements that the source must meet in order for the area to attain and maintain the National Ambient Air Quality Standards.

**F. How Are Administrative Orders Replaced by Federally Enforceable State Operating Permits?**

MPCA submitted its operating permit rules into the SIP so that permits issued pursuant to these rules could be considered federally enforceable documents for imposing emission limitations on culpable sources in nonattainment areas. Using permits replaces the MPCA's past practice of issuing an Administrative Order to such sources. EPA approved in concept the use of such permits in lieu of Administrative Orders, but noted that the permits and SIP submittals must be reviewed on a case-by-case basis.

**G. What Is EPA's Final Determination?**

Based on the rationale set forth above and in EPA's Technical Support Document, we are approving the removal of Commercial Asphalt's Administrative Order from the SIP and its replacement with a federally enforceable State operating permit. The removal of the Administrative Order does not affect the integrity of this source's site-specific SIP as the remaining conditions, listed as "Title I conditions" in the State operating permit, contain the necessary emission limits, as well as the monitoring, recordkeeping, and reporting requirements to enforce those limits.

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, EPA is proposing to approve the State Plan should adverse written comments be filed.

A. What Action is EPA Taking?

This action will be effective September 11, 2000 without further notice unless relevant adverse comments are received by August 11, 2000. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. 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 September 11, 2000.

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

#### **Administrative Requirements**

##### *A. Executive Order 12866*

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

##### *B. Executive Order 13132*

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with

State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

##### *C. Executive Order 13045*

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

##### *D. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

##### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

##### *F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory

requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. 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 to the private sector, result from this action.

#### *G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

#### *H. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

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

#### *I. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the

appropriate circuit by September 11, 2000. 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, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: May 24, 2000.

**Francis X. Lyons,**

*Regional Administrator, Region 5.*

Title 40 of Code of Federal Regulations, chapter I, 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. 7401-7671q.

2. Section 52.1220 is amended by adding paragraph (c)(54) to read as follows:

#### **§ 52.1220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(54) On December 7, 1999, the State of Minnesota submitted to remove an Administrative Order and replace it with a federally enforceable State operating permit for Commercial Asphalt's facility located on Red Rock Road in the city of St. Paul. EPA approved a federally enforceable State operating permit (FESOP)(60 FR 21447) for the State of Minnesota on May 2, 1995.

(i) Incorporation by reference

(A) Air Emission Permit No. 12300347-002, issued by the MPCA to Commercial Asphalt CO-Plant 905, on September 10, 1999. Title I conditions only.

[FR Doc. 00-17347 Filed 7-11-00; 8:45 am]

**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 180**

[OPP-301018; FRL-6595-1]

**RIN 2070-AB78**

#### **Bifenthrin; Pesticide Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of bifenthrin in or on caneberry subgroup, grape, head lettuce and peppers, bell and non-bell. The Interregional Research Project (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

**DATES:** This regulation is effective July 12, 2000. Objections and requests for hearings, identified by docket control number OPP-301018 must be received by EPA on or before September 11, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-301018 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-7610; and e-mail address: jackson.sidney@epa.gov.

#### **SUPPLEMENTARY INFORMATION:**

#### **I. General Information**

##### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Cat-egories	NAICS	Examples of poten-tially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufac-turing