

I. 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. 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 rule is not a "major" rule as defined by 5 U.S.C. 804(2).

J. 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 December 10, 2001. 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, Volatile organic compounds.

Dated: September 21, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

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 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(277)(i)(C) (7) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(277) * * *

(i) * * *

(C) * * *

(7) Rule 8–5 adopted on December 15, 1999 and Rule 8–18 adopted on January 7, 1998.

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[FR Doc. 01–25261 Filed 10–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH118–2; FRL–7062–5]

Conditional Approval Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is conditionally approving the Ohio Environmental Protection Agency's (OEPA) State Implementation Plan (SIP) for Prevention of Significant Deterioration (PSD) provisions for attainment areas based on the State's December 5, 2000, letter of commitment to submit the needed changes to its program within one year of the final conditional approval.

Ohio submitted a request for a SIP-approved PSD program on March 1, 1996. The request was supplemented on April 16, 1997, September 5, 1997, December 4, 1997, and April 21, 1998. Ohio Administrative Code (OAC) sections 3745–31–11 to 3745–31–20 contain the permitting provisions for areas attaining the national ambient air quality standards (NAAQS). The general provisions applying to both attainment and nonattainment areas are found in OAC sections 3745–31–01 to 3745–31–10.

EFFECTIVE DATE: This final rule is effective October 10, 2001.

ADDRESSES: Materials relevant to this rulemaking are available for inspection at the following address: Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Genevieve Damico at (312) 353–4761 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, Environmental Engineer, Permits and Grants Section,

Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4761.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

A. What is the purpose of this document?

B. Who will be affected by this action?

C. What is the history of Ohio's PSD program?

D. How are OEPA's PSD rules structured?

E. Why are we granting a conditional approval?

F. How can this conditional approval become fully approved?

G. What are the ramifications for not submitting the necessary changes?

A. What Is the Purpose of This Document?

We are conditionally approving Ohio's PSD program into the SIP. The public comment period for the June 29, 2001, notice of proposed rulemaking closed on July 30, 2001. One comment was received in favor of the conditional approval action. If Ohio fails to timely submit the materials discussed above within one year of EPA's final conditional approval, the final conditional approval will automatically convert to a disapproval.

B. Who Is Affected by This Action?

Because the fully approved PSD program will be similar to the PSD program that OEPA already operates under delegated authority, air pollution sources will generally not be affected by this action. However, persons wishing to appeal PSD permits will have to file their appeals with OEPA under the SIP-approved program, rather than with EPA's Environmental Appeals Board as they have been doing under the delegated PSD program.

C. What Is the History of Ohio's PSD Program?

OEPA submitted its first permitting SIP to EPA on January 31, 1972, and submitted replacement regulations on June 6, 1973. These regulations provided requirements, such as best available technology, that were meant to be uniformly applied throughout the state.

The Clean Air Act (CAA) Amendments of 1977 required states to go further than uniformly applied regulations. The Amendments provided for the designation of areas within a state as "attainment" or "nonattainment." An "attainment" area meets the NAAQS. A "nonattainment" area does not meet the NAAQS.

OEPA requested delegation of the PSD attainment permitting program on February 8, 1980, and received delegation on January 29, 1981.

OEPA submitted a request for approval of Ohio Administrative code (OAC) sections 3745-31-01 to 3745-31-20 into the SIP on March 1, 1996. Ohio subsequently submitted revisions dated March 1, 1996, April 16, 1997, September 5, 1997, December 4, 1997, and April 21, 1998. OEPA's PSD program has since remained in delegated status. The subsequent requests for SIP-approval of Ohio's regulations allow us to grant conditional approval to the program for reasons described below.

D. How Are OEPA's PSD Rules Structured?

Part C of Title I of the CAA requires a SIP for PSD rules for attainment areas. 40 CFR 51.165 and 51.166 contain the requirements for a PSD permitting program. OEPA submitted this SIP in the form of OAC sections 3745-31-11 to 3745-31-20. OEPA also submitted general provisions applying to both attainment and nonattainment areas in the form of OAC sections 3745-31-01 to 3745-31-10.

E. Why Are we Granting a Conditional Approval?

We are granting conditional approval to Ohio's PSD rules, OAC sections 3745-31-01 to 3745-31-20. These rules, for the most part, fulfill Part C of Title I of the CAA by incorporating the critical provisions at 40 CFR 51.165 and 51.166 for ambient air increment consumption, area designation and redesignation restrictions, best available control technology, impact analysis, and air quality modeling. OAC sections 3745-31-01(OOO) does not, however, include a 25 tons per year significance level for particulate matter, or a 50 ton per year significance level for municipal solid waste landfill emissions, as required by 40 CFR 51.166(b)(23)(i). Furthermore, total reduced sulfur and reduce sulfur compounds are incorrectly defined to exclude hydrogen sulfide. Therefore, the definition of significant as required by 40 CFR 51.166(b)(23)(i) is not complete. In a December 5, 2000, letter, OEPA has committed to correct the definition of significance in OAC 3745-31. Because OAC sections 3745-31-01 through 3745-31-20 meet all requirements of 40 CFR 51.165 and 51.166 with this exception, and OEPA has committed to correct these deficiencies, we believe it is appropriate to grant conditional approval. When Ohio demonstrates that the deficiencies identified above are

cured, EPA can grant final approval to these rules.

EPA is currently reviewing OEPA's implementation of the delegated PSD program in response to a petition submitted by D. David Altman on behalf of Ohio Citizen Action, the Ohio Environmental Council, Rivers Unlimited, and the Ohio Sierra Club. Any concerns that EPA finds as a result of this review will be addressed through the process of responding to the petition. Today's proposed conditional approval only addresses whether or not specific provisions of Ohio's administrative code meet the federal criteria for a PSD program, as set forth in 40 CFR Part 51, and does not address any issues regarding how the code is being applied or enforced by Ohio. We believe the OAC revisions meet the criteria for approval with the exceptions listed above, and are therefore granting conditional approval. No particular findings or conclusions in or from the EPA petition review should be inferred from today's conditional

F. How Can This Conditional Approval Become Fully Approved?

OEPA will have one year from the time that the conditional approval is final to submit the necessary changes to its rules to correct the deficiencies identified in this notice. If OEPA does not submit approvable changes within the one year timeframe, EPA will disapprove Ohio's PSD program. Until Ohio's program is finally approved, OEPA will continue to be delegated the authority under § 51.166(b)(23)(i) of the federal PSD regulations to permit sources of significant particulate matter, municipal solid waste landfill emissions, and total reduced sulfur and reduce sulfur compounds. The delegation will continue until such time as the identified deficiencies are corrected and full approval is granted (or unless EPA otherwise addresses the delegation after the review of Ohio's implementation of the PSD program pursuant to the petition discussed above).

G. What Are the Ramifications for Not Submitting the Necessary Changes?

If OEPA fails to submit the necessary rule changes to us, final conditional approval will automatically convert to a disapproval. We will notify the State by letter to this effect. Once the SIP has been disapproved, these commitments will no longer be a part of the approved SIP. We will subsequently publish a notice to this effect in the notice section of the **Federal Register** indicating that the commitment or commitments have been disapproved and removed from the

SIP. If OEPA adopts and submits the final rule amendments to EPA within the applicable time frame, the conditionally approved commitments will remain part of the SIP until the EPA takes final action approving or disapproving the new submittal, those newly approved rules will become part of the SIP.

If after considering the comments on the subsequent submittal, we issue a final disapproval, the sanctions clock under 179(a) will begin. If OEPA does not submit and we do not approve the rule on which any disapproval is based within 18 months of the disapproval, we must impose one of the sanctions under section 179(b)-highway funding restrictions or the offset sanction. In addition, any final disapproval would start the 24 month clock for the imposition of section 110(c) Federal Implementation Plan. Finally, under section 110(m) the EPA has discretionary authority to impose sanctions at any time after final disapproval.

We find that this is good cause for this final conditional approval to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of a conditional approval, which requires that the State make certain submittals within one year of the final conditional approval. Any delay in the effective date of this conditional approval further delays the compliance date by which the State has to submit the rule changes committed to in this document.

EPA Action

In this rulemaking action, we grant conditional approval of OEPA's March 1, 1996, request, as amended by OEPA's April 16, 1997, request, for additions and revisions to OAC sections 3745-31-01 to 3745-31-10, and OAC sections 3745-31-11 to 3745-31-20 because the request meets all of the requirements of 40 CFR 51.165 and 51.166 with the exception of a 25 ton per year significance level for particulate matter; a 50 ton per year significance level for municipal solid waste landfill emissions as required by 40 CFR 51.166(b)(23)(i); and because total reduced sulfur and reduce sulfur compounds are incorrectly defined to exclude hydrogen sulfide. OEPA has also committed to correct the definition of significance in OAC 3745-31.

Administrative Requirements

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 (Public Law 104-4). This rule also does 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), nor will it 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), because it 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 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP 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. 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. 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. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 10, 2001. 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, Carbon monoxide, hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

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

Dated: September 5, 2001.

Thomas V. Skinner,
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 52.1919 is amended by adding paragraph(a)(4) to read as follows:

§ 52.1919 Identification of plan-conditional approval.

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(a) * * *
(4) On March 1, 1996, Ohio submitted revisions to its Permit to Install rules as a revision to the State implementation plan. The request was supplemented on April 16, 1997, September 5, 1997, December 4, 1997, and April 21, 1998.

(i) *Incorporation by reference.*

(A) Rule 3745-31-01 through 3745-31-20, effective September 25, 1998.

[FR Doc. 01-25260 Filed 10-9-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[W185-02-7316; FRL-7076-6]

Approval and Promulgation of Air Quality Plans; Wisconsin; Post-1996 Rate of Progress Plan for the Milwaukee-Racine Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving the post-1996 Rate-Of-Progress (ROP) plan submitted by the State of Wisconsin for the Milwaukee-Racine ozone nonattainment area, as a requested revision of the State Implementation Plan (SIP) for ozone. A post-1996 ROP plan is required for the Milwaukee-Racine ozone nonattainment area under the Clean Air Act (Act). The purpose of the post-1996 ROP plan is to incrementally provide for progress toward attainment of the 1-hour ozone standard in the Milwaukee-Racine ozone nonattainment area by reducing ground-level ozone precursor emissions. The submitted plan, which covers the period of 1996 through 1999 and