

each level of carbon disulfide per charge.

(C) The number of charges per day, for each level of carbon disulfide per charge, used in Viskase's Fibrous process.

(D) The number of charges per day, for each level of carbon disulfide per charge, used in Viskase's NOJAX process.

(E) The total quantity of carbon disulfide used per day in Viskase's Fibrous process, the total quantity of carbon disulfide used per day in Viskase's NOJAX process, and the daily VOM emissions resulting from use of the carbon disulfide.

(F) The monthly use of carbon disulfide, and the monthly VOM emissions resulting from use of the carbon disulfide, during June, July, and August.

(vi) Any violation of the emission limits in paragraphs (u)(8) (i) through (iii) of this section must be reported to USEPA within 30 days of its occurrence.

(vii) In order to determine daily and monthly VOM emissions, the test methods in paragraph (a)(4) of this section may be used in addition to, and take precedence over, the emission factor cited in paragraph (u)(8)(iv) of this section. Method 15 is to be used instead of Methods 18, 25, and 25A when the test methods in paragraph (a)(4) of this section are used to determine VOM emissions from Viskase's cellulose food casing facility.

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40 CFR Part 52

[IL 12-40-6888; FRL-5281-4]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On June 29, 1990, the United States Environmental Protection Agency (USEPA) promulgated Federal stationary source Volatile Organic Compound (VOC) control measures representing Reasonably Available Control Technology (RACT) for emission sources located in six northeastern Illinois (Chicago area) counties: Cook, DuPage, Kane, Lake, McHenry and Will. USEPA also took final rulemaking action on certain VOC RACT rules previously adopted and submitted by the State of Illinois for inclusion in its State Implementation Plan (SIP). Included in USEPA's rule

was a requirement that paper coating facilities, such as Riverside Laboratories' (Riverside) Kane County facility, be subject to specified emission limits. On August 20, 1991, Riverside filed a petition for reconsideration with USEPA in which it contended, based on its economic situation, that the Federal rules were not RACT for its facility. As a result of USEPA's reconsideration, it proposed revised RACT requirements for Riverside's facility on December 16, 1993. In this rule the USEPA is promulgating site-specific RACT limits that are generally the same as those in the proposed rule. USEPA is also withdrawing the June 23, 1992, stay.

EFFECTIVE DATE: This rule is effective September 20, 1995.

ADDRESSES: The docket for this action (Docket No. A-92-66), which contains the public comments, is located for public inspection and copying at the following addresses. A reasonable fee may be charged for copying. We recommend that you contact Randolph O. Cano (312/886-6036) before visiting the Chicago location and Rachel Romine (202/245-3639) before visiting the Washington, DC location.

U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, Eighteenth Floor, Southeast, 77 West Jackson Street, Chicago, Illinois 60604.
Office of Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, Docket No. A-92-66, Room M1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Steve Rosenthal, Regulation Development Branch, U.S. Environmental Protection Agency, Region 5, (312) 886-6052, at the Chicago address indicated above.

SUPPLEMENTARY INFORMATION:

I. Background

In an effort to comply with certain requirements under part D of the Clean Air Act (Act), 42 U.S.C. 7401 et seq., the Illinois Pollution Control Board (IPCB) promulgated certain (RACT I) VOC regulations applicable to sources covered by USEPA's initial round of CTGs¹ (Group I) on July 12, 1979. This requirement is discussed in EPA's April 4, 1979, General Preamble for Proposed Rulemaking (44 FR 20372). Although these regulations addressed emissions

¹ CTGs, which contain information on available air pollution control techniques, their costs and effectiveness, provide recommendations on what EPA calls the "presumptive norm" for RACT. EPA has published three groups of CTGs (Group I, Group II and Group III).

from paper coating, they did not explicitly deal with their applicability to operations where paper is coated by the saturation process, such as at Riverside's operations. As a result of this perceived ambiguity in its regulations, the IPCB held, on January 5, 1989, that Riverside was not a paper coater under the Illinois rules. *Riverside Laboratories Inc. v. IEPA*, PCB 87-62.²

USEPA's position on the definition of papercoating is contained in its November 24, 1987, Post-1987 Ozone and Carbon Monoxide Policy (52 FR 45108). Appendix D of this policy, "Discrepancies and Inconsistencies Found in Current SIPs," states that "[p]aper and fabric coating should cover saturation operations as well as strictly coating operations."

On May 26, 1988, USEPA notified then Governor James R. Thompson that the Illinois SIP was substantially inadequate to achieve the ozone National Ambient Air Quality Standards (NAAQS) in the Chicago and East St. Louis areas. On June 17, 1988, a follow-up letter was sent to Illinois which specifically identified its VOC SIP deficiencies. One of these itemized deficiencies was that the definition of paper coating needed to include "saturation operations."

On April 1, 1987, the State of Wisconsin filed a complaint in the United States District Court for the Eastern District of Wisconsin against USEPA and sought a judgment that USEPA, among other requested actions, be required to promulgate revisions to the Illinois ozone SIP for northeastern Illinois. *Wisconsin v. Reilly*, No. 87-C-0395, E.D. Wis. On January 18, 1989, the District Court ordered USEPA to promulgate an ozone implementation plan for northeastern Illinois within 14 months of the date of that order. On September 22, 1989, USEPA and the States of Illinois and Wisconsin signed a settlement agreement in an attempt to substitute a more acceptable schedule for promulgation of a plan for the control of ozone in the Chicago area. On November 6, 1989, the District Court vacated its prior order and ordered all further proceedings stayed, pending the performance of the settlement agreement.

The settlement agreement called for the use of a more sophisticated air quality model, allowed more time for USEPA to promulgate a Federal Implementation Plan (FIP) using the

² The Appellate Court of Illinois dismissed IEPA's appeal of the IPCB Order on November 17, 1989. See *Illinois v. Riverside Laboratories, Inc.*, Case No. 2-89-0340.

model³ and requires interim emission reductions while the modeling study is being performed. The interim emission reductions were to be achieved through Federal promulgation of required Volatile Organic Material (VOM)⁴ RACT rules which remedy deficiencies in Illinois' regulations.

On December 27, 1989 (54 FR 53080), USEPA proposed to disapprove a number of Illinois rules for their failure to meet RACT requirements. This included the definition of paper coating, which did not address saturation operations. On that date, USEPA also proposed its own RACT rules, including a definition of paper coating to include the "application of coatings by impregnation and/or saturation." On June 29, 1990 (55 FR 26814), USEPA took final action to disapprove the Illinois rules and promulgate the proposed Federal rules, including the proposed definition of paper coating.

On August 30, 1990, Riverside filed a petition for review of USEPA's June 29, 1990, rulemaking in the United States Court of Appeals for the Seventh Circuit. Nine other parties filed petitions for review, which were ultimately consolidated by the Court as *Illinois Environmental Regulatory Group ("IERG") et al. v. Reilly*, No. 90-2778.

On August 20, 1991, Riverside filed a petition for reconsideration with the Agency in which it contends that its economic status prevents the Federal rules from being RACT for its facility. Riverside further amended that petition on September 5, 1991. In support of its contention, Riverside has submitted new information to USEPA concerning its financial situation. Based on this information, USEPA agreed to reconsider the RACT rules for Riverside.

On November 6, 1991, USEPA issued a 3-month stay pending reconsideration of the applicable FIP rules for Riverside (and one other petitioner). This stay was published on November 20, 1991 (56 FR 33712). On June 23, 1992 (57 FR 27935), USEPA published an extension of the stay, but only if and as necessary to complete reconsideration of the subject rules (including any appropriate

regulatory action), pursuant to USEPA's authority to revise the Federal rules in sections 110(c) and 301(a) of the Act, 42 U.S.C. 7410(c) and 7601(a).

II. Riverside's Operations

Riverside's Kane County facility produces thermoset laminating paper products. These products, which include kitchen cabinets and laminated furniture, are produced by saturating materials composed mainly of cellulose fibers with a resin and solvent mixture in a dip tank, i.e., a trough filled with resin.

Prior to 1989, Riverside operated four lines—one solvent-based fabric coating line and three solvent-based polyester lines. These lines emitted (and continue to emit) VOCs. The fabric coating line is not a part of this action.

Since the purchase of Riverside by its current owner in 1986, the company has investigated VOC compliance options, including reformulation of noncompliant coatings and the installation of pollution control equipment. Riverside contends that none of the options investigated was technically feasible or economically reasonable.

In December 1988, Riverside purchased a new water-based coating technology intended (according to Riverside) to reduce plantwide emissions while increasing production. This process, known as the melamine resin process, is utilized on one additional line, and produces no VOC emissions.

III. Proposed Rule

As a result of USEPA's decision to reconsider the Federal rules as applicable to Riverside, USEPA conducted a review of economic information submitted by Riverside. In addition to the information provided in its August 20, 1991, petition for reconsideration, the documentation which Riverside submitted to USEPA concerning its financial situation included the following:

1. A March 27, 1991, table which contains Riverside's annual sales figures for the years 1987 through 1990. This table is an attachment to an April 8, 1991, letter from Riverside's Counsel to USEPA.

2. A July 15, 1991, letter from Riverside's Counsel to USEPA, and enclosures to this letter titled "Technical Justification for Phased-RACT for Riverside Laboratories, Inc." and exhibit B to this Technical Justification, which is an "Annual Statistical Report for Calendar 1990" by the Laminating Materials Association, Inc.

3. A September 11, 1991, letter from Riverside's Counsel to USEPA, and Attachment C to this letter titled "Riverside Laboratories, Inc. Pounds/ Batch and VOC Content of Coatings."

4. An October 1, 1991, letter from Riverside's Counsel to USEPA, and an attached July 12, 1990, table titled "Riverside Laboratories Compliance Plan (Polyester Production)."

5. A February 5, 1992, letter from K. J. Guillette, President of Riverside, to Louise Gross, Assistant Regional Counsel, Office of Regional Counsel, USEPA, Region 5.

USEPA reviewed these documents, copies of which are available in the docket. USEPA's analysis is presented in a February 18, 1992, memorandum from Tom Walton of USEPA's Cost and Economic Impact Section, to Steve Rosenthal of USEPA's Region 5 Air and Radiation Division (a copy of which is also available in the docket).

According to these documents, for Riverside to control its three polyester lines, an annualized control cost would be incurred of at least \$283,000 per year. In addition, based upon the polyester and melamine sales figures for 1987-90, Riverside would have had to increase its polyester prices significantly to offset this annualized control cost. The declining market in polyester sales and the elasticity of that market, however, would impede Riverside's ability to raise its prices by the full per unit cost of control without reducing its sales. In addition, the information provided by Riverside supported its assertion that it had limited, if any, ability to obtain capital through conventional means in order to finance additional pollution control equipment.

Based on this review, USEPA proposed revised RACT rules for Riverside on December 16, 1993 (58 FR 65688). The proposed site-specific RACT limitations for Riverside's three polyester lines, Lines C, D, and E are as follows. First, Lines C, D, and E shall comply with a VOC emission limitation of 2.9 pounds per gallon (lbs./gal.) no later than December 31, 1996. Lines C, D, and E shall comply with an emission limitation of 3.5 lbs./gal., with the following exception: the VOC content of some specified solutions on Line E may exceed the 3.5 lbs./gal. limitation so long as these coatings do not exceed the 1990 maximum emission levels provided in the rule. Finally, the proposed rule establishes annual limits or "caps" on polyester production. Riverside's July 15, 1991, letter documents that the company will be able to achieve a VOC RACT level of 2.9 lbs./gal., at least in part due to the

³USEPA is no longer required to promulgate a FIP using the modeling results because the settlement agreement relieves USEPA of such responsibility in the event that amendments to the Act establish new deadlines for States to achieve attainment of the ozone standard. The primary responsibility for developing any remaining revisions to Illinois' SIP belongs to Illinois because the Clean Air Act Amendments of 1990 establish such new deadlines.

⁴The State of Illinois uses the term "VOM" in its regulations. For the purposes of this RACT analysis, this term is considered equivalent to USEPA's use of the term "VOC."

decline in the polyester market, by December 31, 1996.

IV. Response to Comments

In response to the proposal, comments were submitted by Riverside on January 18, 1994. In addition, on January 5, 1994, Pioneer Plastics Corporation (PPC) requested a hearing, which was held on April 6, 1994. Comments were submitted at the hearing and after the hearing by PPC. Additional comments were submitted after the hearing by Riverside.

A. Riverside January 18, 1994, Comments

(1) Riverside Comment

Riverside requests that the provision contained in proposed 40 CFR 52.741(e)(10)(iii), establishing a square feet-per-year production cap on coating lines C, D, and E be clarified to include only production involving coatings which are not controlled to the 2.9 pounds/gallon limitation. Riverside believes that this interpretation is implicit in the rule.

USEPA Response. USEPA disagrees with Riverside's "clarification request." The purpose of the production cap is to achieve interim VOC emission reductions for the period (through the end of 1996) during which Riverside is to receive less stringent emission limits than other paper coaters. The cap is based on annual production limits, which are a more enforceable surrogate for annual emissions. The July 12, 1990, table upon which the interim production limits are based was supplied by Riverside and is clearly based on total polyester production. If only polyester production involving coatings greater than 2.9 pounds/gallon coatings was considered for the cap, then total VOC emissions could increase during this period. Furthermore, Riverside did not present any alternative (to polyester production) limits that would ensure interim emission reductions.

(2) Riverside Comment

Riverside does not believe that PPC has standing to request a public hearing on this matter, since it is not an "interested person" under the statute.

USEPA Response. USEPA disagrees with Riverside's position that PPC lacks standing to request a public hearing in this rulemaking. USEPA has broad discretion in determining whether a party is an "interested person" under section 307(d)(5)(ii) of the Act. USEPA believes that PPC's position as a competitor of Riverside provides a sufficient basis for its status as an

"interested person" entitled to request a hearing.

B. PPC April 6, 1994, and Riverside May 16, 1994, Comments

PPC presented both oral testimony and written comments on April 6, 1994. It also submitted comments clarifying an Appendix to its April 6, 1994, written comments on April 7, 1994, and additional comments on May 5, 1994 (which are discussed in a later section). PPC's comments are intended to support its position that USEPA should reject Riverside's Petition for Reconsideration and Riverside should not be given interim relief from the paper coating limit in paragraph 52.741(e). Riverside submitted a May 16, 1994, supplemental comment to respond to PPC's April 6, 1994, comments. PPC's comments are followed by Riverside's rebuttal to PPC's comments, which are in turn followed by USEPA's response to PPC's comments.

(1) PPC Comment

PPC claims that the "Background Document on Riverside Laboratories Issues" (Background Document), May 1990, should have been in the rulemaking docket on December 16, 1993, and available to the public at that time.

USEPA Response. The relevant portion of that document, the annualized cost of add-on control for Riverside, was included in the docket (in the February 18, 1992, Tom Walton memorandum). This was the only information from the Background Document on which EPA relied in developing its proposed action. Furthermore, the Background Document, which established these costs, was available to any interested parties as part of the docket for the Federal rules promulgated on June 29, 1990. USEPA referred to this rulemaking action and that docket in the proposed rule. PPC admitted to receiving this document on March 24, 1994, or over seven weeks prior to the close of the public comment period. Therefore, any harm allegedly caused by EPA's failure to include the entire document in the docket as of the time the proposed rule was published was cured because PPC had a longer period to review this document than was originally provided in the NPR.

(2) PPC Comment

On November 20, 1991, USEPA announced a three-month stay pending reconsideration of the Federal RACT rules as they apply to Riverside. This stay expired on February 6, 1992. A stay

beyond this date is in violation of the Act.

USEPA Response. On November 20, 1991, USEPA proposed to extend the 3-month stay pending reconsideration, but only if and as long as necessary to complete reconsideration of the rule (56 FR 58528). No public comments were received on this proposal. On June 23, 1992 (57 FR 27935), USEPA published the final rule extending the stay. The time for seeking judicial review of the stay expired on August 22, 1992. The stay is not at issue in this current rulemaking action. Furthermore, as stated in the proposed and final rulemaking actions, USEPA believes that sections 110(c), 301(a) and 307(d)(1)(B) of the Act provide sufficient statutory support for extending the stay, since the extension was deemed necessary in order to complete action on the reconsideration request.

(3) PPC Comment

The USEPA has failed to perform the required conformity analysis. Section 176 of the Act requires all Federal actions to conform to an applicable implementation plan. PPC disagrees with USEPA's position that 40 CFR 93.153(c)(2)(iii) automatically exempts rulemaking actions from the requirement to perform a conformity analysis.

USEPA Response. PPC is mistaken in its interpretation of the requirements of section 176 of the Act and of the conformity regulations in 40 CFR Part 93. The applicability portion of the conformity regulations exempt "Actions which would result in no emissions increase or an increase in emissions that is clearly de minimis." (40 CFR 93.153(c)(2)). "Rulemaking and policy development and issuance" are specifically identified (40 CFR 93.153(c)(2)(iii)) as a category of activities that are exempt because they do not cause an increase in emissions—which is different than not requiring as much reductions as would be required by RACT. This rulemaking action is, therefore, clearly exempt from the requirement to perform a conformity analysis.

(4) PPC Comment

Riverside has failed to submit an acceptable RACT demonstration necessary to justify a relaxed RACT emission limit. The USEPA has established guidelines in its November 9, 1988, Easco proposed rulemaking regarding what constitutes an acceptable RACT investigation. USEPA outlined in Appendix A (53 FR 45287-88) to the Easco proposed rulemaking action a

detailed discussion of what it considers to be an acceptable RACT investigation. Riverside's RACT investigation fails to meet the "reasonable efforts standard" (in Appendix A) and, therefore, USEPA should reject Riverside's Petition for Reconsideration.

Riverside Response. The procedure contained in Appendix A to the Easco rulemaking does not apply to the Riverside rulemaking. USEPA was not required to follow the procedure outlined in Appendix A in determining whether Riverside should have a different RACT standard than other paper coating operations. Even if one accepts PPC's premise, PPC's conclusion does not follow. Riverside has demonstrated to USEPA that it could qualify for an "adjusted RACT" standard in two ways.

First, Riverside has demonstrated that it could qualify for an "adjusted RACT" standard through the use of "cross-line averaging" and the "plant-wide bubble" concept. Second, Riverside has made "reasonable efforts" to demonstrate that an alternative RACT standard is appropriate and has provided USEPA with all the economic and technical information requested by USEPA. Contrary to PPC's assertions, the actions listed in Appendix A are only examples of "reasonable efforts" and are not the sole means by which a source can demonstrate that an alternative RACT standard is appropriate.

USEPA Response. Appendix A in the Easco proposal presents a policy (not regulatory) discussion of what constitutes an acceptable investigation of the availability of complying low-solvent coatings. It does not establish the full range of procedures for determining whether alternative RACT is appropriate for a specific source. USEPA agrees that similar facilities were using add-on control but determined that use of such add-on controls was not economically feasible for Riverside prior to the end of 1996.

According to PPC, there are three sources in the country that produce polyester saturated papers (see pp. 12-13 of the April 6, 1994, hearing Transcript). These companies are Riverside, PPC and Dyno. On pp. 64-66 of the Hearing Transcript, PPC states that low-solvent complying polyester resins do not exist. Therefore, Riverside's contention that low VOC complying coatings are unavailable was confirmed by PPC. Since that fact has been firmly established, the extent to which Riverside documented that it performed the actions laid out in Appendix A is of no consequence.

(5) PPC Comment

Riverside has failed to demonstrate that the "presumptive norm" is not economically feasible. PPC does not consider Riverside's purchase of a new melamine paper coating line as a valid reason for not purchasing pollution control equipment. Riverside's decision to enter a new market cannot be used as an argument to obtain a RACT relaxation on the polyester lines. Riverside had the capital in 1988 and could have easily made the business decision to invest in pollution control equipment for the polyester lines and comply with the RACT limitations. This decision should not now be rewarded by the USEPA in the form of an extension to comply with the presumptive norm. PPC also believes that Riverside's economic condition has improved since 1991.

Riverside Comment. Riverside has demonstrated that the RACT limitation applicable to other paper coating operations is not economically feasible for its facility. Riverside submitted to USEPA extensive economic information and completed an economic analysis pursuant to USEPA's economic guidance. In a March 18, 1991, letter to USEPA, Riverside provided USEPA with a revised economic analysis of its operations pursuant to USEPA policy. This analysis demonstrated that a significant impact would result if Riverside were required to install pollution control equipment at its facility.

In 1989, Riverside was a small operation with approximately 25 employees and annual sales of approximately \$5.5 million. Currently, Riverside has approximately 31 employees, and in 1993, Riverside had annual sales of approximately \$6 million. Contrary to PPC's claims that Riverside's economic condition has drastically improved, these figures demonstrate that Riverside is in a similar position to its position in 1989.

USEPA Response. USEPA maintains that its economic analysis, which was presented in a February 18, 1992, memorandum was an adequate basis for allowing Riverside additional time to comply with the paper coating limits in the FIP. This economic analysis is discussed in the December 16, 1993, proposed rule. Although purchase of a melamine line—and subsequent melamine production—may not directly replace polyester production, there appear to be undeniable benefits from shifting to a zero emitting coating technology.

(6) PPC Comment

Riverside has failed to demonstrate that the proposed limit (including the increasingly more stringent annual production caps) is the most stringent limit that is technologically and economically feasible.

Riverside Comment. As stated in its initial request for site-specific relief, Riverside intends to continue to decrease its polyester production and does not believe that a revision of the polyester production cap is necessary. Riverside believes that the proposed rule reflects the most stringent RACT limitation which is currently achievable at its facility and that the proposed compliance plan will guarantee that Riverside is in full compliance with RACT requirements contained in the FIP by 1996.

USEPA Response. USEPA has only temporarily relaxed the control requirements for Riverside and expects it to fully comply with the FIP paper coating limits at the end of the extension that was proposed and is being established by today's final action. USEPA disagrees with PPC about the merit of cheaper, and less effective, control scenarios that would reduce the feasibility of fully controlling VOC emissions from all three paper coating lines at the end of the proposed extension. In other words, mandatory partial controls in the interim would likely interfere with subsequent full control of Riverside's three lines (in the event that Riverside is unable to switch to low VOC coatings).

USEPA rejects PPC's scenario of shutting down two lines and increasing production on a third line with add-on control. USEPA does not consider scenarios that involve shutting down lines to be reasonable approaches to establishing "the most stringent limit that is technologically and economically feasible".

USEPA also disagrees with PPC about the increasingly more stringent production caps that were proposed. These will ensure lower production, and VOC emissions, than have occurred in the past.

(7) PPC Comment

The USEPA's economic analysis is too limited and no longer accurate. USEPA should not rely on this economic analysis for two reasons. First, the analysis is limited to the affordability of a RACT "presumptive norm" scenario. There is no analysis as to the economic feasibility of less expensive control scenarios which would achieve VOC control. Second, the analysis drafted in February of 1992 is now outdated and

no longer accurately reflects the polyester market nor Riverside's economic position in this market.

Riverside Comment. While Riverside's financial condition has improved since 1989, PPC's claims that Riverside can now afford control technology are based on an incomplete understanding of this rulemaking. The purpose of this proposed rule was to allow Riverside to maintain employment while taking steps to attain compliance with the general RACT standards applicable to paper coating operations. Under the proposed rule, it was anticipated that Riverside's financial condition would improve as it increased melamine production. Eventually, due to this improved financial condition, Riverside could either phase out its polyester production lines or mechanically alter these lines to comply with the paper coating limitation.

PPC claims that Riverside's share of the polyester market rose from 43 percent to 90 percent in the years 1989 through 1992. PPC's production information is incorrect and—based on more accurate reporting methods—Riverside's market share has dropped from 40 percent to approximately 25 percent. In addition, there is no proof that Riverside has used its extension to decrease its prices below the market rate.

USEPA Response. First, USEPA restates its response (regarding the lack of merit of partial controls) to the previous comment. In addition, USEPA's economic analysis, which was based on an adequate level of information on Riverside's financial status, established that Riverside may not have been able to obtain capital through conventional means and, even if it could obtain the capital, the inability to completely recover the control cost might have made remaining in business unattractive. USEPA proposed additional time for Riverside (to comply with the FIP papercoating limits) to enable its financial position to improve sufficiently for it to both remain in business and afford to comply at the end of the proposed extension. In fact, USEPA would not have proposed to grant additional time to Riverside had the company not demonstrated that it would be able to comply at the end of the proposed extension. It is, therefore, to be expected that Riverside's financial position would be better now than in 1992. However, there is insufficient basis for revising Riverside's final compliance date.

C. PPC May 5, 1994 Comment

On April 16, 1992, USEPA published the General Preamble for future

proposed rulemaking for the implementation of Title I of the Act Amendments of 1990. 57 FR 13498, April 16, 1992. The Appendices to the General Preamble containing important supporting materials referenced throughout the General Preamble were published in the **Federal Register** a short time later. 57 FR 18070, April 28, 1992. PPC quotes from Appendix C4 (57 FR 18074) as follows:

Economic feasibility rests very little on the ability of a particular source to "afford" to reduce emissions to the level of similar sources. Less efficient sources would be rewarded by having to bear lower emission reduction costs if affordability were given high consideration. Rather, economic feasibility for RACT purposes is largely determined by evidence that other sources in a source category have in fact applied the control technology in question.

PPC added that other similar facilities control their VOC emissions through thermal incineration meeting the RACT presumptive norm limitation. It also added that Riverside had not provided the USEPA with the required supporting data—listed in Appendix C4—necessary for an economic feasibility exemption petition.

USEPA Response. The Clean Air Act requires that implementation plans for nonattainment areas must provide for, *inter alia*, the implementation of RACT as expeditiously as practicable. See § 172(c)(1). USEPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is *reasonably available considering technological and economic feasibility*. 44 FR 53762 (September 17, 1979) (emphasis added). In its June 29, 1990 promulgation of the Chicago FIP, USEPA reiterated this definition. It also acknowledged that for certain sources the RACT "presumptive norm" may not be appropriate, due to the source's particular economic and/or technical circumstances. See 55 FR 26832.⁵

In the June 29, 1990 rulemaking, EPA also addressed a comment submitted by Riverside that it was "unfair and unreasonable to require a small business such as Riverside, which has just made a substantial investment in order to reduce its rate of emissions, to place add-on controls on production lines which may be shut down in the near future." 55 FR at 26843. In response,

⁵ "However, recommended controls are based on capabilities and problems which are general to the industry; they do not take into account the unique circumstances of each facility. * * * States are urged to judge the feasibility of imposing the recommended controls on particular sources, and adjust the controls accordingly. * * *" 55 FR 26832, fn 15.

EPA stated its concern about the economic impact that the FIP's regulatory requirements could have on small businesses; and indicated its willingness to evaluate individual cases if it were provided with sufficient data on each business seeking to be exempted based on unreasonable economic impacts. EPA further noted that Riverside had not provided such information, but could in the future in connection with a site-specific SIP revision. 55 FR 26844.⁶ As a result, in conjunction with its petition for reconsideration, Riverside has provided substantial documentation concerning the economic feasibility of the FIP limits. See 58 FR at 65889–65890. Based upon this information, EPA determined in the December 16, 1993 proposal that Riverside had made a sufficient showing, and proposed to defer the final compliance date to December 31, 1996.

The paragraph quoted by PPC in the April 28, 1992 Appendices to the General Preamble does not preclude the establishment of a site-specific RACT determination based on economic (in)feasibility. Rather, it recognizes that affordability can, in certain cases, be considered. More importantly, the language following the paragraph excised by PPC contains a discussion of the types of cost information which EPA would use in addressing an affordability claim. 57 FR 18074. EPA's analysis of the FIP's impact on Riverside was based on similar parameters, including capital and annualized costs, sales figures and its debt/asset ratio. See February 18, 1992 memorandum from Tom Walton of EPA's Cost and Economic Impact Section (available in the docket, and discussed in greater detail in the December 16, 1993 proposal).

For these reasons, EPA has concluded that the current FIP RACT limits are not economically feasible for the Kane County facility at this time; and that Riverside should have additional time—until December 31, 1996—to comply.

V. Photochemical Reactivity of Acetone

USEPA requires that VOCs be regulated because of their contribution to ground level (tropospheric) ozone. Accordingly, USEPA specifically excludes any organic compounds from the definition of VOC which it has determined to have negligible contribution to tropospheric ozone formation. On September 30, 1994, (59 FR 49877)—in response to petitions filed by three parties—USEPA proposed to add acetone to the list of compounds that are excluded from the definition of

⁶ See, also, response to "affordability" comments submitted by Viskase. 55 FR 26846.

VOC. On June 16, 1995, USEPA took final action (60 FR 31633) on the exclusion of acetone from the definition of VOC.

A variety of scientific materials were submitted to USEPA supporting the assertion of several petitioners that acetone is of negligible photochemical reactivity. The petitioners based their request for the exclusion of acetone on a demonstration that the photochemical reactivity of acetone is not appreciably different from that of ethane, which is the most reactive compound on the current list of compounds which are named in the definition of VOC as being of negligible reactivity. Based on the scientific data presented in the materials submitted by the petitioners, demonstrating that acetone is not appreciably different from ethane in terms of photochemical reactivity and is therefore negligibly reactive and should be excluded from the definition of VOC, and after USEPA's review and consideration of all comments received during the public comment period, USEPA added acetone to the list of compounds that are excluded from the definition of VOC (60 FR 31633). As stated in this final rule, "The revised definition will also apply in the Chicago ozone nonattainment area pursuant to the 40 CFR 52.741(a)(3) definition of volatile organic material or VOC compound."

Mr. Ken Guilette, President of Riverside Laboratories, provided information about Riverside's solvent use in a September 23, 1994, letter to USEPA. In this letter, Mr. Guilette stated that, as of about five years ago, "all solvents except acetone were eliminated from the formulations. Any purchased raw materials or additives which contain VOCs use acetone exclusively." Mr. Guilette added that acetone is the only VOC emitted by Riverside Laboratories.

V. Summary and Conclusions

This rule establishes revised RACT limitations for Riverside's Kane County facility. Under this rule, Lines C, D and E will be required to comply with a VOC limit of 2.9 lbs./gal. no later than December 31, 1996. Prior to that time, interim emission limits are established for both VOC emissions and polyester production. In addition, any paper coatings which contain any VOC other than acetone are required to comply with a VOC limit of 2.9 lbs./gal. upon publication of this rule in the **Federal Register**. These requirements are based upon the information contained in the notice of proposed rulemaking, USEPA's and Riverside's responses to comments, USEPA's exclusion of

acetone from the definition of VOC, and Riverside's statement that it uses no VOCs except acetone.

This action completes USEPA's reconsideration proceedings. Consequently, USEPA is withdrawing the June 23, 1992, stay.

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA 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, USEPA 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. This action involves only one source, Riverside Laboratories, Inc. Therefore, USEPA certifies that this RACT promulgation does not have a significant impact on a substantial number of small entities.

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to a State, local, and/or tribal government(s) in the aggregate.

These apply to a single private sector source located in the Chicago ozone nonattainment area. To the extent that the rules being promulgated by this action will impose any mandate upon this source, such a mandate will not result in estimated annual costs of \$100 million or more to that source.

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 October 20, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose 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.

Dated: August 7, 1995.

Carol M. Browner,
Administrator.

For the reasons set out 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.

Subpart O—Illinois

2. Section 52.741 is amended by adding new paragraph (e)(10) and removing and reserving paragraph (z)(4) to read as follows:

§ 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry and Will Counties.

* * * * *

(e) * * *

(10) Until December 31, 1996, the control and recordkeeping requirements in this paragraph apply to the three solvent-based polyester paper coating lines (Lines C, D and E) at Riverside Laboratories' Kane County, Illinois facility, instead of the control requirements in paragraphs (e)(1) and (e)(2) of this section and the recordkeeping requirements in paragraph (e)(6) of this section. Compliance with this paragraph must be demonstrated through the applicable coating analysis test methods and procedures specified in paragraph (a)(4)(i) of this section. The requirements in paragraphs (e)(1), (e)(2), and (e)(6) of this section shall apply to Riverside on and after December 31, 1996.

(i) After December 21, 1995, no coatings shall at any time be applied on Lines C, D or E which exceed 3.5 pounds (lbs.) volatile organic material (VOM) per gallon of coating (minus water and any compounds which are specifically exempted from the definition of VOM), except as provided in paragraph (e)(10)(ii) of this section.

(ii) After December 21, 1995, the following specifically identified coatings may exceed 3.5 lbs. VOM per gallon of coating (minus water and any compounds which are specifically exempted from the definition of VOM) only if they are applied on Line E and they do not exceed the limits indicated below (minus water and any compounds which are specifically exempted from the definition of VOM): EXP-5027—4.34 lbs./gallon

PD 75 CLR—4.19 lbs./gallon
 PD 75 BRN—4.18 lbs./gallon
 SQZ-54—3.88 lbs./gallon
 SPX-34GL—3.51 lbs./gallon

(iii) That portion of Riverside's polyester production which is manufactured with the use of any VOC, from Lines C, D, and E, may not exceed the following levels: 35 million square feet per year during and after 1992, 29 million square feet per year during and after 1994, and 25 million square feet during 1996. Compliance with this requirement shall be determined by adding the polyester production from any 12 consecutive months during and after the years indicated, through 1996. That is, the polyester production for any 12 consecutive months starting with January 1992 cannot exceed 35 million square feet; the polyester production from any 12 consecutive months starting with January 1994 cannot exceed 29 million square feet; and the polyester production for the twelve months from January through December 1996 cannot exceed 25 million square feet. Only those square feet of polyester whose production involves the use of VOC need to be restricted by the production levels in this paragraph (e)(10)(iii) of this section.

(iv) By December 21, 1995, Riverside shall certify to the Administrator that its polyester coating operations will be in compliance with paragraphs (e)(10)(i), (e)(10)(ii), and (e)(10)(iii) of this section. Such certification shall include the following:

- (A) The name and identification number of each coating as applied on coating lines C, D and E.
- (B) The weight of VOM per volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied on each coating line.
- (v) The Administrator must be notified at least 10 days prior to the use of any polyester coating not previously identified pursuant to paragraph (e)(10)(iv) of this section. This notification must include the information specified in paragraphs (e)(10)(iv)(A) and (e)(10)(iv)(B) of this section.

(vi) On and after December 21, 1995, Riverside shall collect and record all of the following information each day for each coating and maintain the information at the facility for a period of 3 years:

- (A) The name and identification number of each coating as applied.
- (B) The weight of VOM per volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day.

(C) Any record showing a VOM content in excess of the emission limits in paragraph (e)(10)(i) or (e)(10)(ii) of this section shall be reported by sending a copy of such record to the Administrator within 30 days following its collection.

(D) Any VOM besides acetone used in any coating must be identified.

(vii) Starting with the first full month after December 21, 1995, Riverside shall collect and record the figures on polyester production (in square feet), for each month and maintain the information at the facility for a period of at least 3 years.

(viii) Regardless of any other provision of paragraph (e)(10) of this section, after August 21, 1995 no coating which contains any VOM other than acetone shall at any time be applied on Line C, D, or E which exceeds 2.9 lbs. VOM per gallon of coating (minus water and any compounds which are specifically exempted from the definition of VOM).

* * * * *

[FR Doc. 95-20649 Filed 8-18-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[IL62-1-5674A; FRL-5281-6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) approves a requested revision to the Chicago ozone Federal Implementation Plan (FIP) as it pertains to the American Decal & Manufacturing Company (ADMC) in Chicago, Illinois. This action revises the Chicago FIP and incorporates the revised requirements into the Code of Federal Regulations. The rationale for the approval is set forth in this final rule; additional information is available at the address indicated below. Elsewhere in this **Federal Register**, USEPA is proposing approval, soliciting public comment, and offering an opportunity for a public hearing on this requested FIP revision. If adverse comments are received or a public hearing is requested on this direct final rule, USEPA will withdraw this final rule and address the comments received in a new final rule. Unless this final rule is withdrawn, no further rulemaking will occur on this requested FIP revision.

DATES: This final rule is effective October 20, 1995 unless adverse

comments are received or someone requests a public hearing by September 20, 1995. 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 (AR-18J), Regulation Development Branch, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Docket: Pursuant to section 307(d)(1)(B) of the Clean Air Act (Act), 42 U.S.C. 7607(d)(1)(B), this action is subject to the procedural requirements of section 307(d). Therefore, USEPA has established a public docket for this action, A-95-14, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday thru Friday, at the following addresses. We recommend that you contact Steven Rosenthal before visiting the Chicago location and Rachel Romine before visiting the Washington, D.C. location. A reasonable fee may be charged for copying.

The United States Environmental Protection Agency, Region 5, Regulation Development Branch, Eighteenth Floor, Southeast, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886-6052.

The United States Environmental Protection Agency, Docket No. A-95-14, Air Docket (LE-131), Room M1500, Waterside Mall, 401 M Street SW., Washington, D.C. 20460, (202) 245-3639.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer (312) 886-6052.

SUPPLEMENTARY INFORMATION: On June 29, 1990, USEPA promulgated a FIP for the six counties in the Chicago metropolitan area: Cook, DuPage, Kane, Lake, McHenry, and Will. 55 FR 26818, codified at 40 CFR 52.741. This FIP required that certain volatile organic compound sources comply with reasonably available control technology (RACT) requirements. In determining the applicability of some of these regulations to particular sources, USEPA used the concept of "maximum theoretical emissions" (MTE), which is defined as "the quantity of volatile organic emissions that theoretically could be emitted by a stationary source before add-on controls based on the design capacity or maximum production capacity of the source and 8760 hours per year * * *." 55 FR 26860, 40 CFR 52.741(a). Relief for otherwise subject sources is available through a site-specific State Implementation Plan (SIP)