

FR 8213), and comments were invited by April 13, 1996. No comments were received. Accordingly, the interim final rule is adopted as a final rule without change.

By Authority of the Board.

For the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96-26137 Filed 10-21-96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

RIN 2135-AA09

Seaway Regulations and Rules: Inflation Adjustment of Civil Monetary Penalty

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: This final rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Debt Collection Improvement Act of 1996. The rule adjusts the amount of the statutory civil penalty for violation of the Seaway Regulations and Rules under the authority of the Ports and Waterways Safety Act of 1972, as amended (PWSA).

EFFECTIVE DATE: This rule is effective on October 22, 1996.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366-6823.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), Public Law 101-410, 104 Stat. 890, 28 U.S.C. 2461 NOTE, as amended by the Debt Collection Improvement Act of 1996 (Act), Public Law 104-134, April 26, 1996, requires the inflation adjustment of civil monetary penalties (CMP) to ensure that they continue to maintain their deterrent value. The Act requires that not later than 180 days after its enactment, October 23, 1996, and at least once every four years thereafter, the head of each agency shall, by regulation published in the Federal Register, adjust each CMP within its jurisdiction by the inflation adjustment described in the 1990 Act. The cost-of-living adjustment is the percentage (if any) for each CMP by which the

Consumer Price Index for all urban consumers (CPI), published annually by the Department of Labor, for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted pursuant to law. Nevertheless, the first adjustment to a CMP may not exceed 10 percent of that penalty amount. Any increased penalties shall apply only to violations which occur after the date on which the increase takes effect.

33 U.S.C. 1232(a) imposes a maximum \$25,000 civil penalty for a violation of a regulation issued under the authority of the PWSA, which includes the Seaway Regulations and Rules in 33 CFR Part 401. The penalty was set in 1978. The CPI for June, 1978, was 195.3. The CPI for June, 1996, is 469.5. The inflation factor, therefore, is 469.5/195.3 or 2.40. The maximum penalty amount after the increase and statutory rounding would be \$60,000 (2.4×25,000). The new maximum penalty amount after applying the 10% limit on an initial increase is \$27,500. Accordingly, paragraph (a) of § 401.102 is being amended to change the amount of the penalty from \$25,000 to \$27,500.

Regulatory Evaluation

This final rule is exempt from Office of Management and Budget review under Executive Order 12866 because it is limited to the adoption of statutory language, without interpretation. As stated above, the provisions contained in this final rulemaking set forth the inflation adjustment in compliance with the Act for a specific, applicable CMP under the authority of the Corporation. The great majority of individuals, organizations, and entities addressed through the Seaway Regulations and Rules do not commit violations and, as a result, we believe any aggregate economic impact of this revision will be minimal, affecting only those who violate the regulations. As such, the final rule and its inflation adjustment should have no effect on Federal and State expenditures. This final rule has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the proposed regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this final rule will not have a significant

economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations and Rules primarily relate to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This final rule does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

Federalism

The Corporation has analyzed this final rule under the principles and criteria in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Notice and Public Comment

Notice and an opportunity for public comment under the Administrative Procedure Act (APA) (5 U.S.C. 553) are waived. The APA provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with those procedures because they are impracticable, unnecessary, or contrary to the public interest. The Corporation has determined under 5 U.S.C. 553(b)(3) that good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking comports with the statutory authority in the Act with no issues of policy discretion. Accordingly, the Corporation finds that the opportunity for prior comment is unnecessary and contrary to the public interest and is issuing this revised regulation as a final rule that will apply to all future cases under this authority.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and record keeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation amends Part 401—Seaway Regulations and Rules (33 CFR Part 401) as follows:

PART 401—[AMENDED]

1. The authority citation for Subpart B or 33 CFR part 401 is added to read as follows and the authority citations at the end of §§ 401.101 and 401.102 are removed:

Authority: 33 U.S.C. 981-990, 1231 and 1232; and 49 CFR 1.52.

§ 401.102 [Amended]

2. Paragraph (a) of § 401.102 is amended by removing the number "\$25,000" and adding, in its place, the number "\$27,500".

Issued at Washington, D.C. on October 17, 1996.

Saint Lawrence Seaway Development Corporation.

Gail McDonald,

Administrator.

[FR Doc. 96-27032 Filed 10-21-96; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV017-6003a; WV040-6005a; FRL-5619-8]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Prevention of Significant Deterioration: NO₂ and PM-10 Increments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving two State Implementation Plan (SIP) revisions submitted by the State of West Virginia. The first revision amends West Virginia's Prevention of Significant Deterioration (PSD) regulation by amending definitions, establishing the maximum increase in ambient nitrogen dioxide concentrations allowed in an area above the baseline concentration (the increment) and updating the references to federal air quality modeling procedures. The second revision removes increment provisions for total suspended particulates (TSP) and replaces them with increment provisions for particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM-10). The second revision also updates the references to federal air quality modeling procedures and adds provisions for pollution control projects at electric utilities. The intended effect of this action is to approve revisions to West Virginia's PSD regulation as it meets federal requirements. This action is being taken under section 110 of the Clean Air Act.

DATES: This action is effective December 23, 1996 unless notice is received on or before November 21, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely

notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Kathleen Henry, Chief, Permit Programs Section, Mailcode 3AT23, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia 25311.

FOR FURTHER INFORMATION CONTACT: Lisa M. Donahue, (215) 566-2062, donahue.lisa@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On August 10, 1993, the State of West Virginia submitted formal revisions to its State Implementation Plan (SIP). Only the revisions to Title 45 Code of State Rules Series 14, Permits for Construction and major Modification of Major Stationary sources of Air Pollution for the Prevention of Significant Deterioration (45 CFR 14) are the subject of this rulemaking notice. The other portions of the August 10, 1993 submittal, including amendments to 45 CSR 5, 19, 21, and 29, are the subjects of separate rulemaking notices. West Virginia submitted another formal revision to 45 CSR 14 on May 20.

The August 10, 1993 SIP revision consists of changes to 45 CSR 14 which amend definitions, establish the maximum increase in ambient nitrogen dioxide concentrations allowed in an area above the baseline concentration (the increment) and update the references to federal air quality modeling procedures. The May 20, 1996 revision consists of additional changes to 45 CSR 14 which add provisions for a PM-10 increment, further update the federal modeling guideline reference, and add provisions to facilitate pollution control projects at electric utilities.

EPA evaluated West Virginia's SIP revisions and concluded that the revised regulations strengthen the SIP by providing for the protection of the PSD increments for nitrogen dioxide and PM-10, and meet the federal PSD requirements of 40 CFR 51.166.

The revised regulations are enforceable by EPA, with the exception

of the definition of "potential to emit". In the definition of "Potential to Emit" (§ 45-14-2.6), the language is written to allow use of limitations on potential to emit (PTE) that would be enforceable by the West Virginia Chief of Air Quality, but not EPA. Two recent court decisions (*National Mining Association v. EPA*, 59 F.3d 1351 (D.C. Cir. 1995) and *Chemical Manufacturers Ass'n v. EPA*, No. 89-1514 (D.C. Cir. Sept. 15, 1995)) spoke to the limitations in the capacity of a source to emit a pollutant and whether those limitations must be federally enforceable. Since the *Chemical Manufacturers Ass'n v. EPA* ruling vacated the federally enforceable portion of the definition of PTE, EPA cannot require it in West Virginia's PSD program.

A more detailed evaluation of the submitted revisions, including a discussion of the court rulings, is provided in two Technical Support Documents, which are available upon request from the Regional EPA office listed in the **ADDRESSES** section of this document.

EPA is approving these SIP revisions without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revisions should adverse or critical comments be filed. This action will be effective December 23, 1996 unless, by November 21, 1996, adverse or critical comments are received.

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 this action serving as a proposed rule. 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 December 23, 1996.

Final Action

EPA is approving the State of West Virginia's revisions to 45CSR14 "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration" submitted on August 10, 1993 and May 20, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future