40 CFR Part 52

[TN–178–1–9707a; FRL–5682–9]

Approval and Promulgation of Implementation Plans; Hamilton County, TN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Chattanooga-Hamilton County portion of the Tennessee State Implementation Plan (SIP) to allow the Chattanooga Hamilton County Air Pollution Control Bureau (CHCAPCB) to issue Federally enforceable state operating permits (FESOP). EPA is also approving the CHCAPCB's FESOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA or ''the Act'') so that the CHCAPCB may issue Federally enforceable state operating permits containing limits for hazardous air pollutants (HAP).

DATES: This final rule will be effective April 21, 1997 unless adverse or critical comments are received by March 20, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to Kelly Fortin at the EPA regional office listed below. Copies of the documents used in developing this action are available for public inspection during normal business hours at the locations listed below. Interested persons wanting to examine these documents, contained in docket number TN178–1, should make an appointment with the appropriate office at least 24 hours before the visiting day:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

U.S. Environmental Protection Agency, Region 4, Air & Radiation Technology Branch, Atlanta Federal Center, 100 Alabama Street SW., Atlanta, Georgia 30303.

Tennessee Department of the Environment and Conservation, L&C Annex, 401 Church Street, Nashville, Tennessee, 37243–1531.

Chattanooga-Hamilton County Air Pollution Control Bureau, 3511 Rossville Boulevard, Chattanooga, Tennessee 37407–2495.

FOR FURTHER INFORMATION CONTACT: Kelly Fortin, Air & Radiation Technology Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 100 Alabama Street SW., Atlanta, Georgia 30303, 404–562–9117. Reference file TN178–1.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

On December 15, 1995, the CHCAPCB, through the Tennessee Department of Environment and Conservation, submitted a SIP revision to make certain permits issued under the CHCAPCB's existing minor source operating permit program Federally enforceable pursuant to the EPA requirements specified in the Federal Register notice entitled ''Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans'' (see 54 FR 27274, June 28, 1989). Additional materials were provided by the CHCAPCB to EPA on August 12, 1996. The CHCAPCB requested approval of their synthetic minor source SIP provisions for the purpose of limiting emission of HAPs on December 12, 1994.

EPA has always had and continues to have the authority to enforce state and local permits which are issued under permit programs approved into the SIP. However, EPA has not always recognized as valid certain state and local permits which purport to limit a source's potential to emit. The principle purpose for adopting the regulations that are the subject of this notice is to give the CHCAPCB a Federally recognized means of expeditiously restricting potential emissions such that sources can avoid major source permitting requirements. A key mechanism for such limitations is the use of Federally enforceable state or local operating permits. The term ''Federally enforceable,'' when used in the context of permits which limit potential to emit, means ''Federally recognized.''

The SIP revision that is the subject of this action approves Sections 4–2, 4–3, 4–4, 4–8, 4–12, 4–16, 4–17, 4–18, and 4–19 of the Chattanooga Air Pollution Control Ordinance (and identical language in corresponding sections of the Hamilton County Air Pollution Control Regulation and ordinances of the nine incorporated municipalities) into the Hamilton County portion of the Tennessee SIP. In this action, EPA is only approving that portion of the State's December 15, 1995 SIP submittal for Chattanooga-Hamilton County that includes or is necessary for the implementation of the CHCAPCB's FESOP program. The remaining portion of the SIP submittal will be addressed in a separate action.

EPA has determined that the above referenced portion of the submittal and the additional materials provided by the CHCAPCB satisfy the five criteria outlined in the June 28, 1989, Federal Register notice. Please refer to section II of this notice for the criteria upon which this decision was based.

II. Analysis of the CHCAPCB Submittal

Criterion 1. The county's operating permit program (i.e. the regulations or other administrative framework describing how such permits are issued) must be submitted to and approved by EPA as a SIP revision.

The Chattanooga-Hamilton County Air Pollution Control Board, operating under a certificate of exemption pursuant to Tennessee Code Annotated, Section 68–201–115, has authority to administer a state operating permits program in all areas of Hamilton County Tennessee, with the exception of Indian reservations and tribal lands. The CHCAPCB operating permits program is implemented and enforced through: (1) the Chattanooga Air Pollution Control Ordinance (within the incorporated municipality of the City of Chattanooga, Tennessee); (2) the Hamilton County Air Pollution Control regulation (in the unincorporated areas of Hamilton County, Tennessee); and (3) air pollution control ordinances prepared for and enacted in the incorporated municipalities of East Ridge, Red Bank, Soddy-Daisy, Signal Mountain, Lakesite, Walden, Collegedale, Lookout Mountain, and Ridgeside. Chattanooga, Hamilton County, and the nine municipalities have identical regulations for air pollution control, except for codification, which are implemented by the CHCAPCB. For convenience, in this document the Chattanooga codification will be used.

On December 15, 1995 the CHCAPCB, through the Tennessee Department of Environment and Conservation, submitted a SIP revision request to EPA consisting of revisions to Section 4 of the Chattanooga Air Pollution Control Ordinance (and corresponding sections of the Hamilton County Air Pollution Control Regulation and ordinances of the nine incorporated municipalities), amending the CHCAPCB's existing stationary source requirements to include provisions to issue FESOPs. This submittal is the subject of this rulemaking action.

Criterion 2. The SIP revision must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made

in accordance with the approved operating permit program) and provide that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not ''Federally enforceable'' by EPA. Sections 4–3, 4–4 and 4–8 of the Chattanooga regulations meet this criterion.

Criterion 3. The state operating permit program must require that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any applicable limitations and requirements contained in the SIP, or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise ''Federally enforceable'' (e.g. standards established under sections 111 and 112 of the Clean Air Act). Sections 4–2 and 4–8(c)(11)(c) of the Chattanooga regulations meet this criterion.

Criterion 4. The limitations, controls, and requirements of the state's operating permits must be permanent, quantifiable, and otherwise enforceable as a practical matter. Section 4–8(c)(11)(d) of the Chattanooga regulations meets this criterion.

Criterion 5. The state operating permits must be issued subject to public participation. This means that the CHCAPCB agrees, as part of their program, to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be ''Federally enforceable.'' This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permits. Section 4–8(c)(11)(g) of Chattanooga regulations meets this criterion.

A. Applicability to Hazardous Air Pollutants

CHCAPCB has also requested approval of their FESOP program under section 112(l) of the Clean Air Act for the purpose of creating Federally recognized limitations on the potential to emit for HAPs. Approval under section 112(l) is necessary because the SIP revision discussed above only extends to criteria pollutants for which EPA has established national ambient air quality standards under section 109 of the Act. Federally enforceable limits on criteria pollutants or their precursors (i.e. VOCs or PM–10) may have the incidental effect of limiting certain HAPs listed pursuant to section 112(b).[1] As a legal matter, no additional program approval by the EPA is required beyond SIP approval under section 110 in order for these criteria pollutant limits to be recognized as Federally enforceable. However, section 112 of the Act provides the underlying authority for controlling all HAP emissions, regardless of their relationship to criteria pollutant controls.

EPA has determined that the five criteria, published in the June 28, 1989, Federal Register notice, used to determine the validity of a permit that limits potential to emit for criteria pollutants pursuant to section 110 are also appropriate for evaluating the validity of permits that limit the potential to emit for HAPs pursuant to section 112(l). The June 28, 1989, Federal Register notice does not address HAPs because it was written prior to the 1990 amendments to the Clean Air Act; however, the basic principles established in the June 28, 1989, Federal Register notice are not unique to criteria pollutants. Therefore, these criteria have been extended to evaluations of permits limiting the potential to emit of HAPs.

To be recognized by EPA as a valid permit which limits potential to emit, the permit must not only meet the criteria in the June 28, 1989, Federal Register notice, but it must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) provides that EPA will recognize a permit limiting the potential to emit for HAPs only if the state program: (1) contains adequate authority to assure compliance with any section 112 standard or requirement; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

EPA plans to codify in Subpart E of Part 63 the approval criteria for programs limiting potential to emit HAPs. EPA anticipates that these criteria will mirror those set forth in the June 28, 1989, Federal Register notice. Permit programs which limit potential to emit for HAPs and are approved pursuant to section 112(l) of the Act prior to the planned regulatory revisions under 40 CFR Part 63, Subpart E, will be recognized by EPA as meeting the criteria in the June 28, 1989, Federal Register notice. Therefore, further approval actions for those programs will not be necessary.

EPA believes it has authority under section 112(l) to recognize FESOP programs that limit a source's potential to emit HAPs directly under section 112(l) prior to this revision to Subpart E. EPA is therefore approving the CHCAPCB FESOP program so that the CHCAPCB may issue permits that EPA will recognize as validly limiting potential to emit for HAPs.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes the FESOP program submitted by the CHCAPCB contains adequate authority to assure compliance with section 112 requirements since the third criterion of the June 28, 1989, notice is met; that is the CHCAPCB rules require that all requirements in the permits issued under the authority of the operating permit program must be at least as stringent as all other applicable Federally enforceable requirements.

Regarding the requirement for adequate resources, the CHCAPCB has committed to provide for adequate resources to support their FESOP program. EPA expects that resources will continue to be sufficient to administer those portions of the minor source operating permit program under which the subject permits will be issued, because the CHCAPCB has administered a minor source operating permit program for a number of years. However, EPA will monitor the implementation of the FESOP program to ensure that adequate resources are in fact available.

EPA also believes that the CHCAPCB program provides for an expeditious schedule which assures compliance with section 112 requirements. The program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in the CHCAPCB program would allow a source to avoid or delay compliance with a CAA requirement applicable on a particular date. In addition, the CHCAPCB's program would not allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally recognized limit by the relevant deadline.

Finally, EPA believes it is consistent with the intent of section 112 of the Act for States to provide a mechanism through which a source may avoid classification as a major source by obtaining a Federally recognized limit on its potential to emit HAPs. EPA has long recognized as valid, permit programs which limit potential to emit

[1] EPA issued guidance on January 25, 1995, addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAPs to below section 112 major source thresholds.

for criteria pollutants as a means for avoiding major source requirements under the Act. The portion of this approval which extends Federal recognition to permits containing limits on potential to emit for HAPs merely applies the same principles to another set of pollutants and regulatory requirements under the Act. It should be noted that a source that receives a Federally recognized operating permit may still need a Title V operating permit if EPA promulgates a MACT standard which requires non-major sources to obtain Title V permits.

EPA has reviewed this SIP revision and determined that the criteria for approval as provided in the June 28, 1989, Federal Register notice (54 FR 27282) and in section 112(l)(5) of the Act have been satisfied.

B. Eligibility for Previously Issued Permits

Eligibility for Federally enforceable permits extends not only to permits issued after the effective date of this rule, but also to permits issued under the CHCAPCB's existing rules prior to the effective date of today's rulemaking. If the CHCAPCB followed their own regulations, then the agency issued a permit that established a Federally recognized permit condition that was subject to public and EPA review. Therefore, EPA will consider all such operating permits Federally enforceable upon the effective date of this action provided that any permits that the CHCAPCB wishes to make Federally enforceable are made available to EPA and are supported by documentation that the procedures approved today have been followed. EPA may review any such permits to ensure their conformity with the program requirements.

III. Final Action

In this action, EPA is approving the CHCAPCB FESOP program. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 21, 1997 unless, by March 20, 1997, 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 April 21, 1997.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214–2225), as revised by the July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision of any SIP. Each request for revision of the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Clean Air Act as Amended in 1990

EPA has reviewed the requests for revision of the Federally-approved Tennessee SIP described in this notice to ensure conformance with the provisions of the Clean Air Act as amended in 1990. EPA has determined that this action conforms with those requirements.

B. Petition for Review

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 21, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the CAA, 42 U.S.C. 7607 (b)(2).)

C. Executive Order 12866

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

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because approval of Federal SIP does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2) and 7410(R)(3).

E. Unfunded Mandates Reform Act of 1995

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 costs to State, local, or tribal governments in the aggregate, or to the 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 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.

F. Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Intergovernmental relations, Particulate matter, Ozone Sulfur oxides.

Dated: January 23, 1997.

A. Stanley Meiburg,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *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 RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(148) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(148) Revisions to the Hamilton County portion of the Tennessee SIP that approve the regulations for Hamilton County, the City of Chattanooga, and the municipalities of East Ridge, Red Bank, Soddy-Daisy, Signal Mountain, Lakesite, Walden, Collegedale, Lookout Mountain, and Ridgeside—submitted by the Tennessee Department of Environmental Protection on December 15, 1995.

(i) *Incorporation by reference.*

(A) Amendments to Sections 2, 3, 4, 6, 8, 12, and 16–19 of the regulation known as the ''Hamilton County Air Pollution Control Regulation,'' the ''Signal Mountain Air Pollution Control Ordinance,'' the ''Lakesite Municipal Code,'' the ''Walden Air Pollution Control Ordinance,'' the ''Lookout Mountain Air Pollution Control Ordinance,'' and the ''Ridgeside Air Pollution Control Ordinance,'' submitted on December 15, 1995 and adopted by Hamilton County on September 6, 1995 and by the following municipalities: Signal Mountain, adopted on December 11, 1995; Lakesite, adopted on November 16, 1995; Walden, adopted on December 12, 1995; Lookout Mountain, adopted on November 14, 1995; and Ridgeside, adopted on April 16, 1996.

(B) Amendments to Sections 4–2, 4–3, 4–4, 4–6, 4–8, 4–12, 4–16, 4–17, 4–18, and 4–19 of the ''Chattanooga Air Pollution Control Ordinance,'' as submitted on December 15, 1995 and adopted on August 16, 1995.

(C) Amendments to Sections 8–702, 8–703, 8–704, 8–706, 8–708, 8–712, 8–716, 8–717, 8–718, and 8–719 of the ''East Ridge City Code,'' as submitted on December 15, 1995 and adopted on September 28, 1995.

(D) Amendments to Sections 8–302, 8–303, 8–304, 8–306, 8–308, 8–312, 8–316, 8–317, 8–318, and 8–319 of the ''Red Bank Municipal Code,'' as submitted on December 15, 1995 and adopted on November 7, 1995.

(E) Amendments to Sections 8–102, 8–103, 8–104, 8–106, 8–108, 8–112, 8–116, 8–117, 8–818, and 8–119 of the ''Soddy-Daisy Municipal Code,'' as submitted on December 15, 1995 and adopted on October 5, 1995.

(F) Amendments to Sections 8–502, 8–503, 8–504, 8–506, 8–508, 5–512, 8–516, 8–517, 8–518, and 8–519 of the ''Collegedale Municipal Code,'' as submitted on December 15, 1995 and adopted on October 2, 1995.

(ii) Other materials. None.

[FR Doc. 97–3867 Filed 2–14–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TX–58–1–7256, FRL–5687–1]

Approval and Promulgation of Air Quality Implementation Plans; Site-Specific State Implementation Plan (SIP) for the Aluminum Company of America (ALCOA) Rockdale, Texas Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: This action corrects three citations made in a direct final rule published on Monday, September 23, 1996 at (61 FR 49685). The direct final rule approved the State of Texas' revision to the sulfur dioxide (SO_2) SIP revision which became effective on November 22, 1996.

EFFECTIVE DATE: February 18, 1997.

FOR FURTHER INFORMATION CONTACT: Petra Sanchez, (214) 553–5713.

SUPPLEMENTARY INFORMATION:

Background

On Monday, September 23, 1996, EPA published a direct final rule (61 FR 49685) approving a revision submitted by Texas pertaining to the ALCOA SIP for sulfur dioxide SO_2 emissions in Rockdale, Texas.

This correction makes a minor clarification to a citation made on page 49685. In the section entitled, ''Good Engineering Practice and Stack Height Increase at Sandow Three,'' a completion date for the stack height increase cited June of 1995. June of 1995 was the date Texas required the construction of the new stack height increase to be completed. The new stack was put into service on April 23, 1995.

The second correction to the document pertains to the incorporation by reference to the State's adoption of rule revisions. On page 49688 of the approval notice under Subchapter 52.2270(c)(101)(i)(B), this section should read, ''Revisions to 30 TAC Chapter 112, Section 112.8 'Allowable Emission Rates From Solid Fossil Fuel-Fired Steam Generators,' Subsections 112.8(a) and 112.8(b) as adopted by the Texas Air Control Board on September 18, 1992, and effective on October 23, 1992.''

Last, the SIP submittal by the State cited on page 49688 under Subchapter 52.2270(c)(101)(ii)(A) stands corrected to read, '' 'Revisions to the State Implementation Plan (SIP) Concerning Sulfur Dioxide Milam County,' dated July 26, 1995, including Appendices G–2–1 through G–2–6.''

Need for Correction

As published, the direct final rule contains errors which may prove to be misleading and are in need of clarification.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior