

Dated: February 24, 2006.

**Julie M. Hagensen,**

*Acting Regional Administrator, Region 10.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 70

[EPA-R07-OAR-2005-MO-0005; FRL-8048-3]

### Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing four actions in response to Missouri's request to revise the State Implementation Plan (SIP) and Part 70 Operating Permit program to include two new rules and three revised rules. Missouri requested approval of portions of rules adopted on June 26, 2003. Because of the state's request for approval of portions of the rules, EPA is not proposing action on all of the state-adopted rules. All of the rules pertain to Missouri's air permits program. EPA is proposing to approve revisions to Definitions and Common Reference Tables in the SIP and Part 70 Operating Permit program. EPA is proposing to conditionally approve the Construction Permits By Rule. EPA is proposing to approve a SIP revision for changes to the Construction Permits Required rule and to conditionally approve portions of the Construction Permits Required rule, which reference the Construction Permits By Rule. EPA is proposing SIP approval of a new rule, Construction Permit Exemptions.

**DATES:** Comments must be received on or before April 21, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2005-MO-0005, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. E-mail: [algoe-eakin.amy@epa.gov](mailto:algoe-eakin.amy@epa.gov).

3. Mail: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. Hand Delivery or Courier. Deliver your comments to: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**Instructions:** Direct your comments to Docket ID No. EPA-R07-OAR-2005-MO-0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket.** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Amy Algoe-Eakin at (913) 551-7942 or by e-mail at [algoe-eakin.amy@epa.gov](mailto:algoe-eakin.amy@epa.gov).

### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval or disapproval of a state regulation mean to me?

What is the Part 70 operating permits program?

What is the Federal approval process for an operating permits program?

What is being addressed in this document?

Have the requirements for approval of a SIP revision and a Part 70 revision been met?

What action is EPA proposing?

### What is a SIP?

Section 110 of the Clean Air Act (CAA or Act) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards (NAAQS) established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

### What is the Federal approval process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

#### **What does Federal approval or disapproval of a state regulation mean to me?**

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA. If a state regulation is disapproved, it is not incorporated into the Federally-approved SIP and is not enforceable by EPA or by citizens under section 304. In the case of a revision to a Federally-approved state regulation, disapproval of the revision means that the underlying state regulation prior to the state's revision remains as the Federally enforceable requirement.

#### **What is the part 70 operating permits program?**

The CAA amendments of 1990 require all states to develop operating permits programs that meet certain federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" source of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all source regulated under the acid rain program,

regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide or PM10 ; those that emit 10 per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state and local agencies operating permits program are also subject to public notice, comment and our approval.

#### **What is the Federal approval process for an operating permits program?**

In order for state regulations to be incorporated into the Federally enforceable Part 70 operating permits program, states must formally adopt regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the approved operating permits program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA are incorporated into the Federally-approved operating permits program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled, "Approval Status of State and Local Operating Permits Programs."

#### **What is being addressed in this document?**

On July 14, 2004, Missouri requested that EPA revise the SIP to include two new rules and three revised rules and revise the Part 70 program to include revisions to two rules. All of these rules pertain to Missouri's air permit program and will assist in effective management of Missouri's air permitting program and provide clarity to several confusing elements of the program. These rules were adopted by the Missouri Air Conservation Commission on June 26, 2003, and became effective under state law on October 30, 2003. When Missouri submitted these rules to EPA, Missouri included the comments made on the rules during the state's adoption process, the state's response to comments, and other information

necessary to meet EPA's completeness criteria. For additional information on the completeness criteria, the reader should refer to 40 CFR part 51, appendix V.

EPA is proposing four actions in response to this request.

The first action we are proposing is to approve the Missouri Department of Natural Resources' (MDNR) request to include, as a revision to Missouri's SIP and Part 70 Operating Permit program, amendments to rule 10 CSR 10-6.020, Definitions and Common Reference Tables. This proposed approval would incorporate changes in definitions of "cold cleaner," "nonattainment area," "opacity," "portable equipment installation," "significant," and "visible emissions." These changes are minor and are consistent with EPA requirements.

The second action we are proposing is to approve and conditionally approve revisions to the Construction Permits Required rule, 10 CSR 10-6.060. These changes clarify and correct rule applicability sections for consistency with Federal regulations. The parts of rule 10 CSR 10-6.060 that are proposed for conditional approval are the references to 10 CSR 10-6.062, Construction Permits By Rule, which is being proposed for conditional approval in its entirety, as discussed later in this proposal.

The third action we are proposing is to approve certain sections of a new Missouri rule, Construction Permit Exemptions, 10 CSR 10-6.061. This rule lists specific categories of construction or modification projects which are not required to obtain permits to construct under the Construction Permits Required rule, 10 CSR 10-6.060. Many of the exemptions previously listed in the Construction Permits Required rule had been previously approved by EPA. For those exemptions which were not previously listed in the Construction Permit Required rule or were not intuitively *de minimis*, EPA Region 7 requested a demonstration that these exemptions do not impact attainment or maintenance of the National Ambient Air Quality Standards (NAAQS). Missouri submitted this demonstration with the June 14, 2004, SIP submittal. EPA believes that this demonstration satisfactorily illustrates that the construction permit exemptions proposed for approval in this action will not interfere with attainment of the NAAQS.

However, one exemption included in the June 2003 state rulemaking is not included in today's proposal. In an October 25, 2005, request from the Director of Missouri's Air Pollution

Control Program to the EPA Region 7 Regional Administrator, Missouri withdrew subparagraph (3)(A)2.D, of 10 CSR 10–6.061 from the SIP submission. This exemption is for “Livestock markets and livestock operations” constructed on or before November 30, 2003. EPA proposes to approve the exemptions in 10 CSR 10–6.061, which do not include the livestock exemption found in subparagraph (3)(A)2.D per Missouri’s request. EPA also proposes to approve the renumbering of the exemptions previously approved into the SIP, which Missouri has moved from 10 CSR 10–6.060 to 10 CSR 10–6.061. This latter proposal involves an administrative change and does not substantively reopen EPA’s approval of the exemptions previously contained in 10 CSR 10–6.060.

The fourth action we are proposing is to conditionally approve the Construction Permits By Rule, 10 CSR 10–6.062. This is a new rule that creates a process by which sources can be exempted from the Construction Permits Required rule, because the rule establishes conditions under which specific sources can construct and operate. It also establishes notification requirements and standard review fees. The rule authorizes sources to construct and operate upon submission of notice to MDNR.

We are proposing conditional approval of rule 10 CSR 10.6–062. This proposed conditional approval does not include paragraph (3)(B)4., which is a permit by rule for livestock operations. In an October 25, 2005, request from the Director of MDNR’s Air Pollution Control Program to EPA Region 7 Regional Administrator, Missouri withdrew the paragraph for EPA approval. EPA anticipates that Missouri will revise and submit new rules relating to livestock operations in the near future.

EPA proposes a conditional approval because this rule, as adopted by the Missouri Air Conservation Commission on June 26, 2003, does not expressly include a mechanism for pre-construction review of applications received from the facilities that want to operate under this rule. Section 110(a)(2)(C) of the CAA requires that each SIP include a program to regulate construction and modification of sources to ensure that the NAAQS are achieved. EPA’s implementing regulation provides that the plan must include procedures, “by which the state \* \* \* will prevent such construction or modification” where the source or modification would violate a control strategy or interfere with attainment or maintenance of the NAAQS (see 40 CFR

51.160(b)). Because Missouri’s Construction Permits By Rule appears to authorize construction to begin before any air quality review occurs, and the rule only provides for revocation of a permit after the source begins construction or operation, EPA believes that Missouri’s preconstruction permit program is deficient with respect to sources which may qualify for the Permit By Rule. With respect to these sources, the rule does not clearly authorize Missouri to prevent construction or modification before construction or modification begins.

In order to rectify these deficiencies, the Missouri Air Conservation Commission (MACC) adopted a resolution on December 8, 2005, which is intended to clarify that Missouri, in administering this rule, will require a preconstruction review period before sources may begin construction and will amend the Construction Permits by Rule to expressly include a preconstruction review period. The MACC also directed the Missouri Department of Natural Resources’ Air Pollution Control Program to complete revisions to this rule within twelve months of the December 2005 resolution. During the interim period required to promulgate an effective rule, the program is directed to conduct a maximum seven day review period procedure for permit by rule notifications submitted in accordance with Missouri rule 10 CSR 10–6.062, Construction Permits by Rule.

Because the MACC resolution serves to clarify the preconstruction review, which is an issue of significant concern to EPA, we propose to conditionally approve into the SIP Missouri rule 10 CSR 10–6.062, Construction Permits by Rule. Section 110(k)(4) of the Clean Air Act states that EPA may conditionally approve a plan based on a commitment from the state to adopt specific enforceable measures within one year from the date of approval. If the state fails to meet its commitment within the one-year period, the approval is treated as a disapproval. As such, this rule is proposed for approval with the condition that Missouri must revise the Construction Permits By Rule to incorporate a preconstruction review period and submit this revised rule for inclusion into the SIP to EPA within one year of the date EPA finalizes this action.

Finally, Missouri’s submittal includes revisions to Missouri’s Operating Permits Rule in 10 CSR 10–6.065. These revisions relate to Missouri’s operating permit program for minor sources which are not subject to the state’s Title V program for major sources (and other specified source categories) and are not

seeking limits to avoid any major source requirements. The rule revisions for rule 10 CSR 10–6.065 relate solely to the state’s basic operating permit program that are not included in Missouri’s approved Part 70 Operating Permits program or SIP. Therefore, we are not acting on these revisions.

#### **Have the requirements for approval of a SIP revision and a Part 70 revision been met?**

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the Technical Support Document (TSD) that is part of this rule, except as noted with respect to the permits by rule provision discussed above, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations. Finally, the submittal met the substantive requirements of Part 70 of the 1990 CAA Amendments and 40 CFR part 70.

#### **What action is EPA proposing?**

EPA is proposing four actions:

(1) EPA is proposing to approve, as an amendment to the Missouri SIP and Part 70 program, revisions to Definitions and Common Reference Tables, Missouri Rule 10 CSR 10–6.020.

(2) EPA is proposing to approve, as an amendment to the Missouri SIP, revisions to the Construction Permits Required, Missouri Rule 10 CSR 10.060. We are proposing to conditionally approve portions of the Construction Permits Required rule, which reference the Construction Permits by Rule, 10 CSR 10–6.062.

(3) EPA is proposing approval into the SIP of a new rule, Construction Permit Exemptions, 10 CSR 10–6.061, except for the livestock markets and livestock operations exemption found in this rule, which was withdrawn in an October 25, 2005, request from the state of Missouri.

(4) EPA is proposing to conditionally approve, as an amendment to the Missouri SIP, the Construction Permits By Rule, 10 CSR 10–6.062, except for the livestock markets and livestock operations exemption found in this rule, which was withdrawn in an October 25, 2005, request from the state of Missouri.

We are soliciting comments on these proposed actions. Final rulemaking will occur after consideration of any comments.

#### **Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed

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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed action 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 proposes to approve 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 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve 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 proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state 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 state submission for failure to use VCS. It would thus be inconsistent with applicable law for

EPA, when it reviews a state 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. This proposed 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.*).

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

##### 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: March 13, 2006.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

[FR Doc. E6-4146 Filed 3-21-06; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 281

[FRL-8048-2]

#### Indiana; Tentative Approval of State Underground Storage Tank Program

**ACTION:** Proposed rule; notice of tentative determination on application of State of Indiana for final approval, public hearing and public comment period.

**SUMMARY:** The State of Indiana has applied for approval of the underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Indiana application and has made the tentative decision that Indiana's underground storage tank program satisfies all of the requirements necessary to qualify for approval. The Indiana application for approval is available for public review and comment. A public hearing will be held if sufficient public interest is expressed.

**DATES:** A public hearing will be held if sufficient public interest is expressed and communicated to EPA in writing by April 11, 2006. EPA will determine by April 21, 2006, whether there is significant interest to hold the public hearing. The State of Indiana will participate in any public hearing held by EPA on this subject. Written comments on the Indiana approval application, as well as requests to present oral testimony, must be received by the close of business on April 11, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-UST-2006-0188. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available (*e.g.*, CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy as follows. You can view and copy Indiana's approval application at the following addresses:

Indiana Department of Environmental Management, File Room located on the 12th floor of the Indiana Government Center—North, 100 North Senate Avenue 46204, Telephone: (317) 234-0963, Monday through Friday, 8:30 a.m. through 4:30 p.m.; and

U.S. EPA Region 5, Underground Storage Tank Section, 77 West Jackson Blvd., Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend you telephone Sandra Siler, Enforcement Officer, at (312) 886-0429 before visiting the Region 5 office.

Submit written comments, identified by Docket ID No. EPA-R05-UST-2006-0188, by one of the following methods: <http://www.regulations.gov>: Follow the online instructions for submitting comments.

E-mail: [tschampa.andrew@epa.gov](mailto:tschampa.andrew@epa.gov).

Fax: (312) 353-3159.

Mail: Mr. Andrew Tschampa, Chief of Underground Storage Tank Section, U.S. EPA Region 5, DU-7J, 77 West Jackson Blvd., Chicago, Illinois 60604.

Hand Delivery: Andrew Tschampa, Chief of Underground Storage Tank Section, U.S. EPA, DU-7J, 77 W. Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special