

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R04-OAR-2005-MS-0001-200612; FRL-8191-4]

Approval and Promulgation of Implementation Plans; Mississippi Prevention of Significant Deterioration and New Source Review**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Mississippi State Implementation Plan (SIP) submitted on August 10, 2005, which include changes made to Mississippi regulations entitled, "Permit Regulations for the Construction and/or Operation of Air Emissions Equipment" and "Regulations for the Prevention of Significant Deterioration of Air Quality." The revisions include changes to the State's permitting rules in order to address amendments to the federal New Source Review (NSR) regulations, which were promulgated by EPA on December 31, 2002 and reconsidered with minor changes on November 7, 2003 (collectively, these two final actions are called the "2002 NSR reform rules"). The August 2005 submittal being approved today also includes changes made to the State's NSR program for minor stationary sources. Specifically, a new rule in Mississippi now allows construction to commence on certain minor sources prior to the applicant receiving a final permit to construct.

EFFECTIVE DATE: This rule will be effective August 9, 2006.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2005-MS-0001. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information 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 copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency,

Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Mississippi State Implementation Plan, contact Mr. Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Telephone number: (404) 562-9043; e-mail address: lakeman.sean@epa.gov. For information regarding New Source Review, contact Ms. Kelly Fortin, Air Permits Section, at the same address above. Telephone number: (404) 562-9117; e-mail address: fortin.kelly@epa.gov.

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I. What Action Is EPA Taking?

EPA is taking final action to approve revisions to the Mississippi SIP regarding Mississippi's NSR programs. On August 10, 2005, the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), submitted revisions to the Mississippi SIP. The SIP submittal consists of changes to the Mississippi Administrative Code (MAC) provisions for the "Regulations for the Prevention, Abatement, and Control of Air Contaminants." Specifically, the SIP revisions include changes to MDEQ regulations entitled, "Permit Regulations for the Construction and/or Operation of Air Emissions Equipment," Air Pollution Control Section 2 (APC-S-2), found at MAC 08-034-002, and "Regulations for the Prevention of Significant Deterioration of Air Quality," Air Pollution Control Section 5 (APC-S-5), found at MAC 08-034-005. MDEQ submitted its revisions to APC-S-2 and APC-S-5 in response to EPA's December 31, 2002, changes to the federal NSR regulations. The State's major NSR rule revisions are an incorporation by reference of the federal rules, 40 CFR 52.21, as amended and promulgated by July 1, 2004, with appropriate changes made. The SIP revisions also include changes to Mississippi's NSR program for minor

sources. The revised minor source program now allows construction to commence on certain minor sources prior to the applicant receiving a final permit to construct. EPA is now taking final action to approve Mississippi's August 2005 SIP revisions including changes to APC-S-2 and APC-S-5.

On March 23, 2006 (71 FR 14658), EPA published a notice of proposed rulemaking (NPR) in the **Federal Register**, proposing to approve the August 2005 SIP revisions. The March 23, 2006, NPR provides more detailed information about the proposed Mississippi SIP revisions being approved today. The public comment period for the proposed action ended on April 24, 2006. No comments, adverse or otherwise, were received on EPA's proposed action.

II. What Is the Background for This Action?

On December 31, 2002 (67 FR 80186), EPA published final changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the Clean Air Act's (CAA's) Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on its reconsideration of the 2002 rules. The purpose of today's action is to approve the August 2005 SIP submittal from the State of Mississippi, which includes EPA's 2002 NSR reform rules, and a change to Mississippi's minor source NSR program.

After the 2002 NSR reform rules were finalized and effective (March 3, 2003), various petitioners challenged numerous aspects of the 2002 NSR reform rules, along with portions of EPA's 1980 NSR rules (45 FR 52676, August 7, 1980). On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) issued a decision on the challenges to the 2002 NSR reform rules. *New York v. United States*, 413 F.3d 3 (D.C. Cir. 2005). In summary, the D.C. Circuit Court vacated portions of the rules pertaining to clean units and pollution control projects, remanded a portion of the rules regarding recordkeeping and relating to language in 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), "Source obligation," and either upheld or did not comment on the other provisions included as part of the 2002 NSR reform rules.

Today's action is consistent with the decision of the D.C. Circuit Court because EPA is not proposing to approve any portions of the 2002 NSR reform rules that were vacated as part of the June 2005 decision. In addition,

Mississippi's rules regarding recordkeeping do not contain the language that was central to the Court's remand. In establishing its recordkeeping requirements, Mississippi incorporated the federal rule (40 CFR 52.21(r)(6)) by reference, but excluded the phrase, "in circumstances where there is a reasonable possibility that a project that is not part of a major modification may result in a significant emission increase." APC-S-5, found at MAC 08-034-005(2.9). As a result, the Mississippi rule requires all sources that use the actual-to-projected-actual methodology to meet the recordkeeping requirements. EPA continues to move forward with its evaluation of the portion of its NSR reform rules that were remanded by the D.C. Circuit Court and is preparing to respond to the D.C. Circuit Court's remand. EPA's final decision with regard to the remand may require EPA to take further action on this portion of Mississippi's rules. At this time, however, Mississippi's recordkeeping provisions are at least as stringent as the federal requirements, and are therefore, approvable.

The 2002 NSR reform rules require that state agencies adopt and submit revisions to their part 51 permitting programs implementing the minimum program elements of the 2002 NSR reform rules no later than January 2, 2006. (Consistent with changes to 40 CFR 51.166(a)(6)(i), state agencies are now required to adopt and submit SIP revisions within three years after new amendments are published in the **Federal Register**.) State agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR reform rules, with different but equivalent regulations. However, if a state decides not to implement any of the new applicability provisions, that state is required to demonstrate that its existing program is at least as stringent as the federal program.

On August 10, 2005, the State of Mississippi submitted SIP revisions for the purpose of revising the State's NSR permitting provisions for both major and minor stationary sources. The affected regulations are, "Permit Regulations for the Construction and Operation of Air Emissions Equipment," APC-S-2, and "Regulations for the Prevention of Significant Deterioration of Air Quality," APC-S-5. The revisions were made to update the Mississippi NSR programs to make them consistent with changes to the federal NSR regulations published December 31, 2002 (67 FR 80186) and November 7, 2003 (68 FR 63021). As noted earlier, Mississippi incorporated the federal

rules (40 CFR 52.21, as amended and promulgated by July 1, 2004) by reference, with minor edits to reflect, for example, that MDEQ is the permitting authority, and not EPA. As a result of Mississippi's incorporation by reference of the federal rules, the resulting State rules are at least as stringent as the federal rules. This is the case even with regard to the provisions where Mississippi made changes, such as, APC-S-5 (MAC 08-034-005(2.9)), which corresponds to 40 CFR 51.21(r)(6), "Source obligation," and is discussed above.

Mississippi's minor source permit regulations, which contain a new provision, are likewise consistent with federal rules regarding minor source programs. Mississippi's new provision, APC-S-2, Section XV.B., entitled, "Optional Pre-Permit Construction," allows construction to commence on certain non-major sources and non-major modifications prior to receiving a final permit to construct, provided certain conditions are met. The revisions to this minor source rule are consistent with the requirements of section 110(a)(2)(C) of the CAA and federal regulations found at 40 CFR 51.160 through 51.164, including 40 CFR 51.160(b), which requires states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the National Ambient Air Quality Standards.

The March 23, 2006, NPR and the Docket for this final action contain more detailed information regarding the Mississippi SIP revisions being approved today, and the rationale for EPA's final action. Additional background information on EPA's 2002 NSR reform rules can be found at 67 FR 80186 (December 31, 2002), and <http://www.epa.gov/nsr>. The public comment period for the final action being taken today ended on April 24, 2006. No comments, adverse or otherwise, were received on EPA's proposed action to approve Mississippi's August 2005 submittal.

III. Final Action

EPA is taking final action to approve revisions to the Mississippi SIP submitted by MDEQ on August 10, 2005. The submittal consists of revisions to the State "Permit Regulations for the Construction and/or Operation of Air Emissions Equipment," APC-S-2, and "Regulations for the Prevention of Significant Deterioration of Air Quality," APC-S-5.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final 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 final action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This final 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 final action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Therefore, it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This final 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 SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. 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 final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide,

Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 29, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart Z—Mississippi

■ 2. Section 52.1270(c) is amended by revising the Chapter title for "APC-S-2" and "APC-S-5" and the entries under Chapter "APC-S-2" and "APC-S-5" to read as follows:

§ 52.1270 Identification of plan.

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(c) * * *

EPA—APPROVED MISSISSIPPI REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * * * *				
APC-S-2 Regulations for the Construction and/or Operation of Air Emissions Equipment				
Section 1	General Requirements	08/27/05	07/10/2006	[Insert citation of publication]
Section II	General Standards Applicable to All Permits	08/27/05	07/10/2006	[Insert citation of publication]
Section III	Application for Permit to Construct and State Permit to Operate New Stationary Source.	08/27/05	07/10/2006	[Insert citation of publication]
Section IV	Public Participation and Public Availability of Information.	08/27/05	07/10/2006	[Insert citation of publication]
Section V	Application Review	08/27/05	07/10/2006	[Insert citation of publication]
Section VI	Compliance Testing	08/27/05	07/10/2006	[Insert citation of publication]
Section VII	Emissions Evaluation Report	08/27/05	07/10/2006	[Insert citation of publication]
Section VIII	Procedures for Renewal of State Permit to Operate.	08/27/05	07/10/2006	[Insert citation of publication]
Section IX	Reporting & Recordkeeping	08/27/05	07/10/2006	[Insert citation of publication]
Section X	Emission Reduction Schedule	08/27/05	07/10/2006	[Insert citation of publication]
Section XI	General Permits	08/27/05	07/10/2006	[Insert citation of publication]
Section XII	Multi-Media Permits	08/27/05	07/10/2006	[Insert citation of publication]
Section XIII	Exclusions	08/27/05	07/10/2006	[Insert citation of publication]
Section XIV	CAFOs	08/27/05	07/10/2006	[Insert citation of publication]
Section XV	Options	08/27/05	07/10/2006	[Insert citation of publication]
Section XVI	Permit Transfer	08/27/05	07/10/2006	[Insert citation of publication]

EPA—APPROVED MISSISSIPPI REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section XVII	Severability	08/27/05	07/10/2006 [Insert citation of publication]	
APC-S-5 Regulations for the Prevention of Significant Deterioration of Air Quality				
APC-S-5	Regulations for the Prevention of Significant Deterioration of Air Quality.	08/27/05	07/10/2006 [Insert citation of publication]	

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[FR Doc. E6-10745 Filed 7-7-06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R07-OAR-2006-0476; FRL-8192-5]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the State Implementation Plan (SIP) and Operating Permits Programs submitted by the state of Nebraska. This action revises monitoring requirements which were found to be less stringent than the applicable Federal rule; adds permits-by-rule provisions, which would provide a streamlined approach for issuing construction/operating permits for hot mix asphalt plants and small animal incinerators; and deletes the chemical compound ethylene glycol monobutyl ether from the list of regulated hazardous air pollutants in Appendices II and III. Approval of these revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's revised air program rules.

DATES: This direct final rule will be effective September 8, 2006, without further notice, unless EPA receives adverse comment by August 9, 2006. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2006-0476, by one of the following methods:

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

2. *E-mail:* rios.shelly@epa.gov.

3. *Mail:* Shelly Rios-LaLuz, 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 Shelly Rios-LaLuz, 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-2006-0476. 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 through <http://www.regulations.gov> or e-mail information that you consider to be CBI or otherwise protected. 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, *i.e.*, 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 copy form. 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 66101. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m. excluding Federal holidays. 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: Shelly Rios-LaLuz at (913) 551-7296, or by e-mail at rios.shelly@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 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?
- What Is EPA's Analysis of These Revisions?
- Have the Requirements for Approval of a SIP and Part 70 Revision Been Met?
- What Action Is EPA Taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA or Act) requires states to develop air