

based on the proposed action. EPA will not institute a second comment period; therefore, any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective July 9, 2010.

#### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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 action 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 19, 2010.

**Walter W. Kovalick Jr.**,

*Acting Regional Administrator, Region 5.*

■ 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 KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(148) to read as follows:

#### § 52.1870 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(148) On March 17, 2009, Ohio submitted revisions to Ohio Administrative Code Chapter 3745-15, Rules 3745-15-01 and 3745-15-05. The revisions pertain to general provisions of OAC Chapter 3745.

(i) Incorporation by reference.  
(A) Ohio Administrative Code Rule 3745-15-01 "Definitions." and Rule 3745-15-05 "'De minimis' air contaminant source exemption." The rules were adopted on January 12, 2009, and became effective on January 22, 2009.

(B) January 12, 2009, "Director's Final Findings and Orders", signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

[FR Doc. 2010-10836 Filed 5-7-10; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2009-0790; FRL-9114-3]

### Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation Number 1

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action approving State Implementation Plan revisions submitted by the State of Colorado on August 3, 2007 to Colorado's Regulation Number 1 (revisions to the performance testing requirements for air curtain destructors). Colorado adopted these rule revisions on October 2, 2006. All other actions submitted by the State of Colorado concurrent with Colorado's Regulation Number 1 revision request will be acted

on at a later date. This action is being taken under section 110 of the Clean Air Act.

**DATES:** This rule is effective on July 9, 2010 without further notice, unless EPA receives adverse comment by June 9, 2010. 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-R08-OAR-2009-0790, by one of the following methods:

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

- *E-mail:* [videtich.callie@epa.gov](mailto:videtich.callie@epa.gov) and [leone.kevin@epa.gov](mailto:leone.kevin@epa.gov)

- *Fax:* (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- *Mail:* Callie A. Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

- *Hand Delivery:* Callie A. Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R08-OAR-2009-0790. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](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 [www.regulations.gov](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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kevin Leone, Air Program, Mailcode 8P-AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6227, or [leone.kevin@epa.gov](mailto:leone.kevin@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Table of Contents**

- I. General Information
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##### **Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The word *Act* or initials *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

- (ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

- (iii) The initials *SIP* mean or refer to State Implementation Plan.

- (iv) The words *State* or *Colorado* mean the State of Colorado, unless the context indicates otherwise.

#### **I. General Information**

*A. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.

- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- f. Provide specific examples to illustrate your concerns, and suggest alternatives.

- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- h. Make sure to submit your comments by the comment period deadline identified.

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

EPA is approving a revision to the Colorado State Implementation Plan

(SIP). On August 3, 2007, the State of Colorado submitted a revision to its SIP, regarding the applicability provisions for incinerator performance testing requirements. This revision addressed Regulation Number 1 of the Colorado Air Quality Control Commission (AQCC) Regulations, entitled "Emission Control for Particulate Matter, Smoke, Carbon Monoxide, and Sulfur Oxides." Colo. Code Reg. § 1001–3, and provides an exemption for air curtain destructors.

### III. What are the changes that EPA is proposing to approve?

Prior to Colorado's revision, Regulation Number 1 Section III.B provided that all incinerators, with the exception of biomedical waste incinerators, meet certain particulate matter grain loading standards. To ensure compliance with these standards, the regulation provides the Colorado Air Pollution Control Division with the ability to require performance tests, in accordance with 40 CFR part 60, appendix A. The revision to Colorado's SIP and regulations adds an additional exemption to Section III.B for air curtain destructors that are subject to 40 CFR part 60.

Under the definition set forth in Colorado's Common Provisions Regulation, 5 Colo. Code Regs. § 1001–2, air curtain destructors are considered incinerators, if they are subject to New Source Performance Standards (NSPS) for incinerators in 40 CFR part 60. However, at the time Section III.B of Regulation 1 was enacted, there were no federal NSPS requirements governing air curtain destructors. Air curtain destructors were not considered incinerators and were not subject to 40 CFR part 60. On December 1, 2000, EPA promulgated NSPS for Commercial and Industrial Waste Incineration Units at 40 CFR part 60, subpart CCCC. On December 16, 2005, EPA promulgated NSPS for Other Solid Waste Incineration Units at 40 CFR part 60, subpart EEEE. Both standards apply to air curtain destructors that meet limited applicability criteria and establish opacity standards and appropriate performance testing requirements for those units.

Prior to the revision, Regulation Number 1, Section III.B required that air curtain destructors subject to incinerator requirements under 40 CFR part 60 meet state grain loading standards and performance testing requirements, as specified in 40 CFR part 60, appendix A, to demonstrate compliance with these standards. It is not feasible, however, to conduct such performance tests on air curtain destructors due to their lack of a distinct stack. Colorado

has revised its regulations to exempt air curtain destructors from these requirements in order to ensure that air curtain destructors are subject to appropriate and reasonable performance test requirements. Accordingly, Regulation Number 1, Section III.B has been revised to clarify that air curtain destructors subject to 40 CFR part 60 are not subject to Section III.B. This revision will result in the requirement for air curtain destructors subject to NSPS to meet the standards and conduct performance testing as provided in 40 CFR part 60, subpart CCCC or 40 CFR part 60, subpart EEEE.

### IV. Final Action

EPA is approving this revision to Colorado's SIP which would revise Regulation Number 1, Section III.B. This revision would exclude air curtain destructors that are subject to a NSPS from complying with infeasible performance testing requirements in Regulation Number 1, Section III.B. This revision will maintain consistency between state and federal law.

EPA considers this change to be consistent with the provisions in CAA § 110(l). CAA Section 110(l) states: "Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter." Thus, under Section 110(l), this SIP revision must not interfere with attainment or reasonable further progress or any other applicable requirement of the Act. When Section III.B was approved into Colorado's SIP, air curtain destructors were not subject to any 40 CFR part 60 requirements. Before EPA's promulgation of 40 CFR part 60, subpart CCCC and 40 CFR part, 60 subpart EEEE, air curtain destructors would not have been considered "incinerators" under the definition in the Common Provisions Regulation, 5 Colo. Code Regs. § 1001–2, and no air curtain destructors would have been regulated under Section III.B. Therefore, this revision exempting air curtain destructors from the requirements of Section III.B does not substantively change the requirements of Colorado's SIP. Because EPA's approval of this SIP revision would not interfere with reasonable further progress or any other applicable requirement of CAA, it is consistent with CAA § 110(l).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the Proposed Rules section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective July 9, 2010, without further notice unless the Agency receives adverse comments by June 9, 2010. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this direct final action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this direct final action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
  - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
  - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
  - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
  - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**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, Incorporation by reference.

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

Dated: December 15, 2009.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

■ 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 G—Colorado**

■ 2. Section 52.320 is amended by revising (c)(114) to read as follows:

**§ 52.320 Identification of Plan.**

\* \* \* \* \*

(c) \* \* \*

(114) On August 1, 2007, the State of Colorado submitted revisions to Colorado Regulation 1 to be incorporated into the Colorado SIP. The submittal revises Section I.I.I.B.2. by adding “and air curtain destructors subject to 40 CFR 60” to the first sentence of Section I.I.I.B.2.

(i) Incorporation by reference.

(A) 5 CCR 1001–3, Code of Colorado Regulations, Regulation Number 1, Emission Control for Particulates, Smokes, Carbon Monoxide and Sulfur Oxides, PARTICULATE MATTER, Section III.B.2, “Incinerators,” effective on November 30, 2006. Published in Colorado Register, Volume 29, Number 11.

\* \* \* \* \*

[FR Doc. 2010–10568 Filed 5–7–10; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R09–OAR–2009–0573; FRL–9146–5]

**Disapproval of State Implementation Plan Revisions, South Coast Air Quality Management District**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing disapproval of a revision to the South Coast Air

Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on September 8, 2009 and concerns volatile organic compound (VOC) emissions from polymeric foam manufacturing operations. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action identifies several deficiencies in SCAQMD Rule 1175.

**DATES:** *Effective Date:* This rule is effective on June 9, 2010.

**ADDRESSES:** EPA has established docket number EPA–R09–OAR–2009–0573 for this action. The index to the docket is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Andrew Steckel, EPA Region IX, (415) 947–4115, [Steckel.andrew@epa.gov](mailto:Steckel.andrew@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to EPA.

**Table of Contents**

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Statutory and Executive Order Reviews

**I. Proposed Action**

On September 8, 2009 (74 FR 46044), EPA proposed to disapprove the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule Number	Rule title	Adopted	Submitted
SCAQMD .....	1175	Control of Emissions from the Manufacturing of Polymeric Cellular (Foam) Products.	09/07/07	03/07/08

We proposed to disapprove this rule because some rule provisions do not satisfy the requirements of section 110 and part D of the Act. These provisions include the following:

A. The rule must require demonstration, through source testing approved in writing by the Executive Officer, that the systems and techniques

in place at a facility achieve 93% collection and reduction of emissions for sources complying with paragraph (c)(4)(B)(iii).

B. The rule must clarify that all operational techniques and parameters needed to achieve 93% control to comply with paragraph (c)(4)(B)(iii) must be clearly defined and enforceable

through a federally enforceable permit such as a Title V operating permit.<sup>1</sup> Rule 1175 should also be revised where possible to identify these parameters.

<sup>1</sup> SCAQMD implements a combined Title I preconstruction and Title V operating permit program.