

US EPA ARCHIVE DOCUMENT

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52 and 70**

[MO 195-1195a; FRL-7559-9]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: EPA is announcing approval of revisions to the Missouri State Implementation Plan (SIP) and Operating Permit Program. The changes, which include revisions to definitions, permit modification procedures, and reporting requirements, were made to correct the operating permit program deficiencies listed in the Notice of Deficiency (NOD) published by EPA in the **Federal Register** on March 25, 2002. These revisions are necessary to ensure consistency between the state and federally approved rules. This rule finds that Missouri has cured all deficiencies noticed on March 25, 2002, and permanently suspends any resulting consequences, including sanctions, with respect to those specific deficiencies.

DATES: This direct final rule will be effective November 17, 2003, unless EPA receives adverse comments by October 17, 2003. If adverse comments are 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: Comments may be submitted either by mail or electronically. Written comments should be submitted to Harriett Jones, Environmental Protection Agency, Air Permitting and Compliance Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to jones.harriett@epa.gov or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in "What action is EPA taking" in the **SUPPLEMENTARY INFORMATION** section.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. 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: Harriett Jones at (913) 551-7730, or by e-mail at jones.harriett@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 being addressed in this document?

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

What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards 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 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.

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 compliance 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" sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources 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 tons 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 Being Addressed in This Document?

The state of Missouri has requested that we approve as a revision to the Missouri SIP and part 70 Operating Permits Program recently adopted revisions to rule 10 CSR 10–6.065. These revisions were adopted to cure the deficiencies discussed in a March 25, 2002, **Federal Register** (67 FR 13626), in which we notified Missouri of deficiencies which we had identified in its Part 70 program. Missouri also made other changes to its program to clarify its terms. These changes were approved by the Missouri Air Conservation Commission on December 5, 2002, and became effective on April 30, 2003. An overview of the revisions is discussed below.

(1) *Definition of Major Source.* For the purpose of determining Part 70 applicability, the definition of major source at 40 CFR 70.2 includes specific emission thresholds for sources in ozone transport regions, carbon monoxide non-attainment areas, and particulate matter (PM₁₀) non-attainment areas. Missouri currently does not have any of these areas within the state. However, Missouri's regulations, which did not previously include these specific portions of the definition of major source, have been revised to include them in 10 CSR 10–6.065(1)(D)3, which defines the term "Part 70 installation." Because the term is also used in Missouri's SIP rules, in particular 10 CSR 10–6.065(5), relating to intermediate (non-major) permits, the revision of the term is a revision to the SIP.

(2) *Revisions to Acid Rain Portion of Permit.* The Title V permit revision procedures specified at 40 CFR 70.7(e) require that any change to the acid rain portion of the permit must be made in accordance with the acid rain permit revision procedures specified in 40 CFR part 72 which were promulgated under Title IV of the Act. Missouri's regulations, which did not previously include this requirement, have been revised to include it in 10 CSR 10–6.065(6)(E)5.A.

(3) *Contemporaneous notice required for "off-permit" changes.* The Title V permit regulations specified at 40 CFR 70.4(b)(14) require that a state may

allow "off-permit" changes (*i.e.*, changes that are not addressed or prohibited by the permit) provided that "contemporaneous" written notice of each such change is provided to EPA and the permitting authority. Missouri's regulations at 10 CSR 10–6.065(6)(C)9.B., which previously allowed these notices to be submitted no later than the next annual emissions report, have been revised to state that they must be submitted contemporaneously with the change.

(4) *Minor permit modification procedures.* The Title V permit modification procedures specified at 40 CFR 70.7(e)(2)(ii)(C) require that applications for minor permit modifications include certification by a responsible official that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used. Missouri's regulations at 10 CSR 10–6.065(6)(E)5.B.(II)(a)III which did not previously include this requirement, have been revised to include it.

Have the Requirements for Approval of a SIP Revision and Part 70 Program 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. The revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations. The submittal also meets the substantive requirements of Title V of the 1990 CAA Amendments and 40 CFR part 70.

What Action Is EPA Taking?

We are approving the Missouri submission as a revision to the Title V program, and to the extent that the definition of major source is revised, as a SIP revision. We are also finding that Missouri has corrected the deficiencies identified in the March 25, 2002, notice. Finally, we are determining that Missouri is no longer subject to sanctions for the deficiencies stated in the notice, and that our obligation to promulgate a Federal permit program has terminated. We are processing this action as a direct final rule because the revisions merely correct the state regulations to be consistent with the requirements of Federal law. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that

are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, MO 195–1195a, in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. 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.

a. *Electronic mail.* Comments may be sent by e-mail to Harriett Jones at jones.harriett@epa.gov. Please include identification number MO 195–1195a in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through *Regulations.gov*, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

b. *Regulations.gov.* Your use of *Regulations.gov* is an alternative method of submitting electronic comments to EPA. Go directly to <http://www.regulations.gov>, click on "To Search for Regulations," then select Environmental Protection Agency and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. *By Mail.* Written comments should be sent to the name and address listed

in the **ADDRESSES** section of this document.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 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 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 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 approves 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 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 and Title V 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 SIP or Title V submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP or Title V submission, to use VCS in place of a SIP or Title V 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 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 CAA, petitions for judicial review of this

action must be filed in the United States Court of Appeals for the appropriate circuit by November 17, 2003. 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

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, Reporting and recordkeeping requirements.

Dated: September 4, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the 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 *et seq.*

Subpart AA—Missouri

■ 2. In § 52.1320(c) the table is amended under Chapter 6 by revising the entry for “10–6.065” to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
10–6.065	Operating Permits	4/30/03	September 12, 2003, FR page citation.	The state rule has sections (4)(A), (4)(B), and (4)(H)—Basic State Operating Permits. EPA has not approved those sections. Section (6), Part 70 Operating Permits, has been approved as an integral part of the operating permit program and has not been approved as part of the SIP. The “intermediate source” program in Section (5) is approved, along with other provisions of 10–6.065 on which it relies.

PART 70—[AMENDED]

■ 1. The authority citation for Part 70 continues to read as follows:

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

Appendix A—[Amended]

■ 2. Appendix A to Part 70 is amended by adding paragraph (n) under Missouri to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

Missouri

(n) The Missouri Department of Natural Resources submitted Missouri rule 10 CSR 10–6.065, “Operating Permits,” on May 6, 2003, approval effective November 17, 2003.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[No. R803CISWI; FRL–7560–2]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming; Control of Emissions From Existing Commercial and Industrial Solid Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves the commercial and industrial solid waste

incinerator 111(d)/129 plan (the “plan”) submitted by North Dakota’s Department of Health on May 1, 2003. The plan was submitted to fulfill requirements of the Clean Air Act (CAA). The plan establishes emission limits, monitoring, operating, and recordkeeping requirements for commercial and industrial solid waste incinerator (CISWI) units for which construction commenced on or before November 30, 1999. This action also approves negative declarations submitted by Colorado’s Department of Public Health and Environment on May 6, 2002; Montana’s Department of Environmental Quality on January 28, 2002; South Dakota’s Department of Environment and Natural Resources on February 28, 2002; Utah’s Department of Environmental Quality on April 23, 2002; Wyoming’s Department of Environmental Quality on December 16, 2002.

DATES: This direct final rule is effective on November 17, 2003, without further notice, unless EPA receives adverse written comments by October 17, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be submitted by mail to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in (Part (I)(B)(1)(i) through (iii)) of the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Kathleen Paser, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency

(EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, 303–312–6526, *paser.kathleen@epa.gov*.

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I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under R803CISWI. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air and Radiation Program, EPA Region 8, 999 18th Street, Suite 300, Denver, CO. EPA requests that if at all possible, you contact the contact listed in the For Further Information Contact section to schedule your inspection. You may view the public rulemaking file at the Regional Office Monday through Friday,