

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[A-3-FRL-1829-8]

Approval of Revisions of the Delaware State Implementation Plan**AGENCY:** Environmental Protection Agency.**ACTION:** Final rule.

SUMMARY: EPA approves amendments submitted by the State of Delaware to Regulations I (Definitions), XXIV (Control of Volatile Organic Compounds Emissions), and XXV (Requirements for Preconstruction Review). The purpose of these amendments is to correct conditionally approved portions of Delaware's Part D nonattainment plan. EPA also approves an extension of the date by which Delaware must submit elements of its inspection and maintenance (I/M) program.

EFFECTIVE DATE: September 30, 1981.

ADDRESSES: Copies of the materials submitted by the State of Delaware are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency,
Region III, Curtis Building, Tenth Floor
6th and Walnut Streets, Philadelphia,
PA 19106. ATTN: Patricia Sheridan;
Public Information Reference Unit, EPA
Library, Environmental Protection
Agency, 401 M Street S.W.,
Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:
Mr. Harold A. Frankford (3AH12), Air
Programs Branch, U.S. Environmental
Protection Agency, Region III, Curtis
Building, 6th and Walnut Streets,
Philadelphia, PA 19106, Telephone
Number: (215) 597-8392.

SUPPLEMENTARY INFORMATION:**Background**

On March 3, 1978, 43 FR 8962, and September 12, 1978, 43 FR 40512, pursuant to Section 107 of the Clean Air Act (the Act), the Administrator designated the New Castle County, Delaware portion of the Metropolitan Philadelphia Interstate Air Quality Control Region (AQCR), as a nonattainment area for ozone (O₃). As a consequence, the State of Delaware was required to develop, adopt, and submit to EPA revisions to its SIP for this nonattainment area.

On May 3, 1979, the State of Delaware submitted revisions of its State Implementation Plan in response to the requirements of Part D of the Act. The Plan consisted of amendments to

Regulations I (Definitions), new Regulations XXIV (Control of Volatile Organic Compounds Emissions), and XXV (Requirements for Preconstruction Review), transportation control measures, a motor vehicle inspection/maintenance (I/M) program, and commitments to implement the necessary transportation control and I/M measures. This Part D nonattainment plan was proposed as a revision of the Delaware SIP on July 25, 1978, 44 FR 43490, and approved in part as a plan revision on March 6, 1980, 45 FR 14551. Portions of Delaware's submission were approved on the condition that certain elements of the plan that did not fully meet the criteria for approval be revised by the State, proposed for public comment by the State at a public hearing, and submitted to EPA within a timely fashion. EPA requested public comment on the acceptability of a February 29, 1980 submittal date (June 30, 1980 for certain elements, including emission standards to be used in Delaware's inspection/maintenance (I/M) program), for revisions to the deficient portions of Regulations I, XXIV, and XXV, 45 FR 14606 (1980).

On March 19, 1980, the State of Delaware formally submitted amendments to Regulations I, XXIV and XXV. The State also provided proof that public hearings were held on December 11, 1979 and December 12, 1979 in accordance with the requirements of 40 CFR § 51.4. The amendments consist of the following changes:

Regulation I—Definitions

In response to EPA's conditional approval action, 45 FR 14551, Delaware has revised Regulation I by adding a definition for "emulsified asphalt" and revising the definitions for "lowest achievable emission rate" and "vapor tight"

Regulation XXIV—Control of Volatile Organic Compounds Emissions

I. In response to EPA's conditional approval action, Delaware has submitted the following amendments:

a. Sections 4.1A, 4.2D, 6.1, 6.2D, 7.1B, 8.4 and 10.4 are amended to specify a categorical compliance schedule including increments of progress toward achieving compliance with the applicable emission standards. At the same time, Sections 1.6, 1.7 and 1.8 are added to provide for alternative compliance schedules which include increments of progress.

b. Sections 5.4, 7.1A, and 11.5 are added to provide test procedures for determining compliance with regulations covering delivery vessels (Section 5.1), bulk gasoline terminals (Section 7.1),

cold cleaning facilities (Section 11.1A(3)(iv)), open top vapor degreasers (section 11.1B(3)(iv)), and conveyORIZED degreasers (Section 11.3B(1)(ii)).

c. Section 12.2 is added to require that the solvent constitution of emulsified asphalt shall not exceed 7.0% by volume as determined by ASTM Distillation Test D-244.

d. Section 9.2 is amended to state that the 40 pounds per day exemption (VOC emissions) for surface coating operations apply to the total emission rate from all coating lines within a stationary source.

2. Delaware has submitted the following additional amendments:

a. Section 1.5 is amended to clarify the requirements for submitting a permit application by any person subject to the final compliance dates provided in Regulation XXIV.

b. Section 4.2B5 is amended to control displaced gasoline vapors during the loading of any stationary storage vessels (rather than any stationary vessel located above ground).

c. Sections 4.3B, 6.2B6, 7.2F, and 9.4 are amended to make clarifying wording changes.

d. The provision of Sections 4.2B1, 4.2B3, and 4.2B5 are moved to Section 5.3.

e. Additional amendments to Section 5 (Delivery Vessels) revise the final compliance date, outline the permit application procedures, and prohibit the release of any volatile organic vapors from any vapor tight delivery vessel.

f. Section 9.3 (which refers to the Chart in Table 1) is revised. The 2.8 pounds per gallon emission limitation for surface coatings becomes effective in 1985. An interim emission limitation of 3.0 pounds per gallon becomes effective in 1980. The 4.8 pounds per gallon emission limitation for final repair becomes effective in 1985. An interim emission limitation of 6.5 pounds per gallon becomes effective in 1982.

g. Section 11 is amended by requiring a carbon adsorption system rather than a carbon absorption system. Section 11.1A(3)(iv) is amended to specify a ventilation rate for the carbon adsorption system. In addition, the requirements of Sections 11.2C(5) and 11.3B(5), referring to certain equipment specifications, are deleted. The effective dates of the provisions of Section 11.2, previously specified in Section 11.2B and 11.2C, are now specified in Section 11.4.

Regulation XXV—Requirements for Preconstruction Review

Section 2E—The definition of "reconstruction" is expanded to include facilities as well as sources. In addition,

a reconstructed source must apply the lowest achievable emission rate (LAER) in nonattainment areas.

Transportation Measures—An additional condition for approval required the State to submit a specific commitment to use available grants and funds to establish, expand, and improve public transportation to meet basic transportation needs. In response to this condition, the Delaware Transportation Authority submitted this "basic transportation needs" commitment on August 15, 1979.

Submittal of Public Comments

On September 4, 1980, 45 FR 58599, EPA acknowledged receipt of these amendments, proposed them as revisions of the Delaware State Implementation Plan, and provided for a 30-day public comment period, ending October 6, 1980. During this period, no comments were received.

EPA Evaluation

The amendments to Regulations I, XXIV and XXV conform with the requirements set out in the Administrator's notice of conditional approval, 45 FR 14551 (1980):

(1) The definitions "vapor tight", "lowest achievable emission rate", and "reconstruction" are acceptable as revised, thus meeting the requirements of 40 CFR 52.433(a).

(2) The amendments to Section 9.2 meet the requirements of 40 CFR 52.433(b).

(3) The test procedures provided by Sections 5.4, 7.1 and 11.5 of Regulation XXIV to determine compliance with Sections 5.1, 7.1, 11.1A(3)(iv) and 11.3B(1)(ii) as adopted March 12, 1980, meet the requirements of 40 CFR 52.433(c).

(4) The categorical compliance schedules contained in Sections 4.1A, 4.2D, 6.1, 6.2D, 7.1B, 8.4 and 10.4 of Regulation XXIV meet the requirements of 40 CFR 52.433(d).

(5) The submittal by WILMAPCO of the "basic transportation needs" and conformity commitments meet the requirements of 40 CFR 52.433(f).

(6) The 7.0% by volume VOC content emulsified asphalt specified in Section 12.2 of Regulation XXIV meet the requirements of 40 CFR 52.433(g).

An additional requirement in 40 CFR 52.433 (§ 52.433(e)) requires the adoption of emission standards for Delaware's inspection/maintenance (I/M) program, in order to insure that the program would be adequate to provide a 25% overall reduction of hydrocarbon emission from light duty vehicles by

December 31, 1987. On March 6, 1980, 45 FR 14608, EPA requested comments on whether June 30, 1980 would be an acceptable date by which Delaware must submit such emission standards. During the public comment period, the Delaware Department of Natural Resources and Environmental Control, submitted comments indicating that additional time would be needed before the State could submit the final I/M emission standards because of scheduling changes necessitated by the lack of funding for the voluntary program. On September 10, 1980, after formal notice and public hearing, the State of Delaware submitted to EPA a revised I/M schedule, according to which the State will submit the I/M emission standards by September 30, 1981. This date is adequate to ensure final implementation of the I/M program by January 1, 1982. Delaware's I/M program, as revised by the September 10, 1980 submittal, is approved on the condition that the September 30, 1981 date for submission of the emission standards is met. Today's action is not intended, nor should it be interpreted, as final approval of Delaware's total I/M program. Final action on Delaware's I/M program will be determined in the 1982 SIP process.

In addition, 40 CFR 52.433(h) provides that WILMAPCO was to submit a commitment not to give its approval to any project, program, or plan which does not conform to the SIP. The notice of proposed rulemaking, 45 FR 14608 (1980), solicited comments as to the acceptability of a June 30, 1980 date for submitting such commitment. Although no comments were received, the Administrator believed that an extension was justified such guidance was issued by EPA on July 24, 1980. Accordingly, WILMAPCO submitted the required commitment on June 4, 1981 thus satisfying the requirement of 40 CFR 52.433(h).

The remainder of the amendments in Sections 1, 4, 5, 6, 7, 9, and 11 of Regulation XXIV serve to clarify ambiguous language and correct typographical errors found at the time that Delaware first submitted this regulation as a portion of the Part D nonattainment SIP (May 3, 1979). Although in EPA's notice of final rulemaking, 45 FR 14551 (1980), EPA did not consider these changes to be substantive, the State still intended to submit corrections for consideration as a revision of the Delaware SIP. The changes are considered by EPA to be approvable.

EPA Actions

In view of the above evaluation, EPA approves the amendments to Regulations I, XXIV and XXV, as well as the revised schedule for submitting I/M emission standards and the transportation commitments, as revisions to Delaware's Part D nonattainment plan. In conjunction with the Administrator's approval action, 40 CFR 52.420 (Identification of Plan) of Subpart I (Delaware) is amended to incorporate these approved regulatory amendments into the approved Delaware SIP. Concurrently, paragraphs (a)-(d) and (f)-(h) of 40 CFR 52.433 (Approval Status) are revoked, since the revisions of the Delaware SIP approved by this rulemaking action satisfy the conditions outlined in 40 CFR 52.433. Section 52.433 of 40 CFR remains in effect, however, because full approval of Delaware's Part D nonattainment plan is conditioned on the fact that Delaware submit I/M emission standards to EPA by September 30, 1981, and that WILMAPCO submit the transportation plan conformity commitments by June 30, 1981.

EPA finds that good cause exists for making this action immediately effective. EPA has a responsibility to take final action on these revisions as soon as possible in order to lift growth sanctions in those areas for which the State of Delaware has submitted adequate plans in accordance with Part D requirements.

Under Section 307(b)(1) of the Clean Air Act, judicial review of (this action) is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12291, EPA also must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This rule is not "major". This action only approves State actions, and imposes no new requirements of its own.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Note.—Incorporation by reference provisions approved by the Director of the Federal Register on July 1, 1981. (42 U.S.C. 7401-7642)

Dated: September 19, 1981.

Anne M. Gorsuch,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Part 52 of the Code of Federal Regulations is revised as follows:

1. In § 52.420, paragraphs (c) (18), (19) and (20) are added as follows:

§ 52.420 Identification of plan.

(c) * * *

(18) Amendments to Regulations I (Definitions), XXIV (Control of Volatile Organic Compounds Emissions) and XXV (Requirements for Preconstruction Review) submitted on March 19, 1980 by the Secretary, Delaware Department of Natural Resources and Environmental Control.

(19) A commitment to use available grants and funds to establish, expand, and improve public transportation to meet basic transportation needs, submitted on August 15, 1979 by the Delaware Transportation Authority.

(20) A revised schedule for implementation of Delaware's inspection and maintenance program submitted by September 10, 1980 by the Secretary, Delaware Department of Natural Resources and Environmental Control.

2. In § 52.433, paragraphs (a), (b), (c), (d), (f), (g), and (h) are removed. Paragraph (e) is revised and redesignated as paragraph (a) to read as follows:

§ 52.433 Control Strategy: Ozone (hydrocarbons).

The Delaware Plan is approved provided that the following conditions are satisfied.

(a) Inspection/maintenance emission standards are adopted by September 30, 1981 to support Delaware's commitment to a program adequate to provide a 25% overall reduction of hydrocarbon emissions from light duty vehicle emissions by December 31, 1987.

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AGENCY

40 CFR Part 52

[A-2-FRL 1904-4]

Approval and Promulgation of Implementation Plans; Revision to the New Jersey State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces Environmental Protection Agency approval of a revision to the New Jersey State Implementation Plan (SIP). The State has made certain changes to its regulation entitled "Control and Prohibition of Open Burning" and is requesting that they be incorporated into the New Jersey SIP. The revision permits open burning, under certain conditions, to clear new land which is to be devoted to agriculture.

This action will be effective on November 30, 1981, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

EFFECTIVE DATE: This action is effective November 30, 1981.

ADDRESSES: All comments should be addressed to: Richard T. Dewling, Acting Regional Administrator, Region II Office, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278.

Copies of the SIP revision are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency,
Region II Office, Air Programs Branch,
Room 1005, 26 Federal Plaza, New
York, New York 10278

Environmental Protection Agency,
Public Information Reference Unit, 401
M Street SW., Washington, D.C. 20460
New Jersey Department of
Environmental Protection, Bureau of
Air Pollution Control, Room 1108,
Labor and Industry Building, John
Fitch Plaza, Trenton, New Jersey
08625.

FOR FURTHER INFORMATION CONTACT:
William S. Baker, Chief, Air Programs
Branch, Environmental Protection
Agency, 26 Federal Plaza, Room 1005,
New York, New York 10278, (212) 264-
2517

SUPPLEMENTARY INFORMATION: On May 11, 1981, the Environmental Protection Agency (EPA) received a proposed revision to the New Jersey State Implementation Plan (SIP). The State's submittal consisted of a revised State

regulation entitled "Control and Prohibition of Open Burning" (Subchapter 2 of Chapter 27, Title 7, New Jersey Administrative Code (N.J.A.C. 7:27-2.1 *et seq.*)), an Order of Adoption signed by the Commissioner of the New Jersey Department of Environmental Protection, a Report of Public Hearing and the Basis for the Proposed Amendments.

The proposed SIP revision changes Subchapter 2 in the following ways:

- A new Section 2.4, "General Provisions," formerly "Exceptions," contains provisions which generally apply to the entire regulation. Subsections 2.4 (a) and (b) clarify and emphasize that permit holders may not burn indiscriminately and must honor the provisions of their permits. A permit system has been developed to allow warranted open burning, under controlled conditions, in certain specified circumstances.

- The duration of short-term, "single event" hazardous materials open burning permits is being extended from one to seven days in order to provide the permit holder with greater flexibility in selecting a day having suitable meteorological and air quality conditions. The State also will grant long-term permits for a period not to

- Hedgerows and cullings have been added to the materials allowed to be burned and a longer term for permits for burning herbaceous plant life, hedgerows, orchard prunings and cullings has been allowed.

- A new section 2.11, "Land Clearing," dealing with open burning for the purpose of clearing land intended for agricultural purposes has been added to encourage the addition of new land for agriculture.

- A new section for special permits has been added to provide a regulatory mechanism for dealing with imminent threats to the public health, welfare, or safety.

- The section on fees has been revised in order to update and expand the fee schedule for open burning permits.

The majority of the amendments to Subchapter 2 are related to changes in procedures or clarification of definitions and will not affect air quality. The potential exception to this lies in Section 2.11, "Land Clearing." To avoid violating air quality standards during the burning of wastes from land cleared for agricultural use, burning will be allowed only under conditions which minimize pollutant emissions and maximize atmospheric dispersion of the air contaminants. In addition, burning will

