

revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternately, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and Subchapter I, Part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (1976).

V. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under Section 205, the USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves programs that are not Federal mandates. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Lead, Particulate matter, Sulfur dioxide, Volatile organic compounds.

Dated: August 20, 1995.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended to read as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraphs (c)(97) and (c)(98) to read as follows:

§ 52.770 Identification of plan.

(c) * * *

(97) On October 25, 1994, the Indiana Department of Environmental Management requested a revision to the Indiana State Implementation Plan in the form of revisions to State Operating Permit Rules intended to satisfy Federal requirements for issuing federally enforceable State operating permits (FESOP) and thereby exempt certain small emission sources from review under the State's title V operating permit program. This FESOP rule is also approved for the purpose of providing federally enforceable emissions limits on hazardous air pollutants listed under section 112(b) of the Clean Air Act. This revision took the form of an amendment to Title 326: Air Pollution Control Board of the Indiana Administrative Code (326 IAC) 2-8 Federally Enforceable State Operating Permit Program.

(i) *Incorporation by reference.* 326 IAC 2-8 Federally Enforceable State Operating Permit Program. Sections 1 through 17. Filed with the Secretary of State May 25, 1994. Effective June 24, 1994. Published at Indiana Register, Volume 17, Number 10, July 1, 1994.

(98) On October 25, 1994, the Indiana Department of Environmental Management requested a revision to the Indiana State Implementation Plan in the form of revisions to State Operating Permit Rules intended to allow State permitting authorities the option of

integrating requirements determined during preconstruction permit review with those required under title V. The State's Enhanced New Source Review provisions are codified at Title 326: Air Pollution Control Board (326 IAC) 2-1-3.2 Enhanced New Source Review.

(i) *Incorporation by reference.* 326 IAC 2-1-3.2 Enhanced new source review. Filed with the Secretary of State May 25, 1994. Effective June 24, 1994. Published at Indiana Register, Volume 17, Number 10, July 1, 1994.

* * * * *

3. Section 52.788 is added to read as follows:

§ 52.788 Operating permits.

Emission limitations and other provisions contained in operating permits issued by the State in accordance with the provisions of the federally approved permit program shall be the applicable requirements of the federally approved State Implementation Plan (SIP) for Indiana for the purpose of sections 112(b) and 113 of the Clean Air Act and shall be enforceable by the United States Environmental Protection Agency (USEPA) and any person in the same manner as other requirements of the SIP. USEPA reserves the right to deem an operating permit not federally enforceable. Such a determination will be made according to appropriate procedures, and be based upon the permit, permit approval procedures or permit requirements which do not conform with the operating permit program requirements or the requirements of USEPA's underlying regulations.

[FR Doc. 95-20482 Filed 8-17-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

PA62-1-7023a; FRL-5272-4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County: USX Clairton Works

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision requires the availability and maintenance of certain air pollution control equipment at the USX Corporation's Clairton Works in Allegheny County, Pennsylvania. The intended effect of this action is to

approve relevant portions of an enforcement order and agreement entered into between the Allegheny County Health Department and the USX Corporation. This action is being taken under section 110 of the Clean Air Act.

DATES: This final rule is effective October 17, 1995 unless notice is received on or before September 18, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and, Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: David J. Campbell, Technical Assessment Section (3AT22), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, phone: 215 597-9781.

SUPPLEMENTARY INFORMATION: On April 26, 1995, the Commonwealth of Pennsylvania submitted a revision to its State implementation plan (SIP) for Allegheny County pertaining to the USX Corporation's Clairton Works. The intended result of the revision is to minimize air pollution control equipment unavailability. This action will significantly reduce the potential for excessive sulfur dioxide (SO₂) emissions from the facility.

Background

On January 30, 1991, EPA notified Pennsylvania of EPA's intention to start the process of redesignating the "Clairton Area" in Allegheny County as nonattainment for SO₂ pursuant to section 107(d)(3) of the Clean Air Act. The Clairton Area is defined as the area inclusive of Lincoln, Liberty, Glassport and Port Vue Boroughs and the City of Clairton in Allegheny County, Pennsylvania. In response to EPA's letter, the Commonwealth of Pennsylvania requested on March 3,

1991 that the Clairton Area be redesignated as nonattainment. As a result, the Clairton Area was proposed to be redesignated as nonattainment for SO₂ on September 22, 1992 (57 FR 43846).

The basis of EPA's determination to redesignate the Clairton Area as nonattainment for SO₂ was the recording of monitored violations of the 24-hour national ambient air quality standard (NAAQS) for SO₂ in 1986 and 1988 and of the 3-hour NAAQS in 1985, 1986, and 1988. The SO₂ monitor that recorded these violations is located in the Borough of Glassport.

Upon investigation into the cause of the monitored violations, it was determined that the exceedances were primarily attributable to the USX Corporation's Clairton Works coking facility located in the City of Clairton. After discussions with the Allegheny County Health Department Bureau of Environmental Quality Division of Air Quality and USX, each of the monitored exceedances correlated with specific sulfur-removal equipment failures and outages at the Clairton Works. Further, USX detailed the significant pollution abatement equipment modification and enhancement program it was implementing at the time to address the equipment failures and outages. USX was adding redundant pollution control devices at its coke oven gas desulfurization facility to greatly reduce SO₂ emissions from the facility. Since the improvement program was initiated, there was a documented reduction in monitored SO₂ concentrations and no monitored exceedances of the NAAQS recorded since 1990.

Based on this information, EPA deferred the redesignation of this area to nonattainment on December 21, 1993 (58 FR 67334). The deferral was contingent upon the codification of the pollution equipment improvements at the USX Clairton Works into the Pennsylvania State implementation plan (SIP) revision for Allegheny County. On April 26, 1995, Pennsylvania submitted a request that EPA approve an official State implementation plan (SIP) revision request for Allegheny County pertaining to the USX Clairton Works.

Summary of SIP Revision

The April 26, 1995 SIP revision consists of an enforcement order and agreement (EOA) entered into between the Allegheny County Health Department and USX Corporation. EPA is specifically approving the introductory portion of the EOA, the section entitled "I. Order" in its entirety, and two attachments to the EOA. The remainder of the EOA

pertains to certain enforcement provisions agreed to between Allegheny County and USX. These provisions are not relevant to the SIP revision.

The EOA, entered into between the County and USX on November 17, 1994, establishes general operating procedures at the Clairton Works regarding certain air pollution control devices.

Specifically, the EOA requires USX to maintain and operate the following control devices: two Claus Plants at the Clairton Works coke oven gas desulfurization facility; a hydrogen cyanide (HCN) destruct unit with two catalytic reactors; a vacuum carbonate unit with two absorber columns, two axial compressors, and two strippers; and, spare heat exchangers. The goal of the EOA is to require redundancy of control devices in order to minimize unavailability of such devices during normal plant operations.

The result of the EOA will be minimized equipment outages and breakdowns. This action will foster the continued maintenance of the NAAQS for SO₂ in the area surrounding the facility. Because the area of concern has been monitoring attainment for a number of years and the previously monitored violations were directly attributable to pollution control equipment malfunctions and breakdowns, the existing federally-approved SO₂ emission limit for the Clairton Works continues to be adequate.

Evaluation of State Submittal

In order to evaluate the approvability as a SIP revision of Pennsylvania's April 26, 1995 submittal, the critical factors to be considered are (A) whether the revised implementation plan demonstrates attainment and maintenance of the national ambient air quality standards (NAAQS) and (B) whether issues of enforceability arise. The following is a discussion of each of these factors; a more detailed evaluation is provided in a Technical Support Document available upon request from the Regional EPA office listed in the **ADDRESSES** section of this notice.

A. Impacts on Attainment/Maintenance on the NAAQS

As mentioned earlier, the Clairton Area is currently designated as attainment for SO₂. The EOA promotes continued maintenance of the NAAQS for SO₂ in the area of concern. Since USX began its pollution control device modification and enhancement program at the Clairton Works in the early 1990's, the ambient air quality monitors in the Clairton Area have indicated a

significant improvement in air quality with regards to SO₂. For the last four years, the three monitoring stations most impacted by the Clairton Works have recorded maximum annual arithmetic means that are less than 60 percent of the annual NAAQS (80 µg/m³) and maximum 24-hour averages that are 75 percent of the 24-hour standard (365 µg/m³). This provides a strong indication that the improvements at Clairton Works has had a direct benefit on ambient air quality in terms of SO₂ and that the NAAQS for SO₂ should continue to be maintained.

B. Enforceability Issues

The EOA requires USX to properly maintain and operate a number of pollution control devices to ensure maximum availability of those devices during plant operation. The EOA fully articulates the expectations of USX in terms of the type of equipment that is to be maintained, the capacity of that equipment, and the required availability of the equipment. The EOA also indicates the level of diligence that is to be applied to the operation and maintenance of the control devices. The EOA requires USX to report any event that causes the breakdown or unavailability of any of the equipment specified in the EOA.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 17, 1995 unless, by September 18, 1995, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on October 17, 1995.

Final Action

EPA is approving the Pennsylvania SIP revision for the USX Clairton Works in Allegheny County.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future

request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements

under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Through submission of this State implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law.

Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

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 October 17, 1995. 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 to approve a revision to Pennsylvania's SIP for Allegheny County pertaining to the USX Clairton Works 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, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur Oxides.

Dated: July 25, 1995.

W. Michael McCabe,
Regional Administrator, Region III.

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. 7401-7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(99) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(99) Revisions to the Pennsylvania implementation plan for Allegheny County pertaining to the operation and maintenance of certain air pollution control devices at USX Corporation's Clairton Works submitted on April 26, 1995 by the Pennsylvania Department of Environmental Resources:

(i) Incorporation by reference.

(A) Letter of April 26, 1995 from Mr. James M. Seif, Secretary, Pennsylvania Department of Environmental Resources transmitting a SIP revision for Allegheny County regarding USX Corporation's Clairton Works.

(B) Portions of an enforcement order and agreement entered into by and between the Allegheny County Health Department and USX Corporation on November 17, 1994 (Enforcement Order No. 200 Upon Consent). Specifically, the introductory section (pages 1-2), the section entitled, "I. Order" (pages 2-6), and attachments C and D to the enforcement order and agreement which list the relevant pollution control equipment. The Agreement was effective on November 17, 1994.

(ii) Additional material.

(A) Remainder of Pennsylvania's December 9, 1993 submittal.

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BILLING CODE 6560-50-P

40 CFR Part 52

[CA 146-1-7134a; FRL-5272-2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Nonattainment Area, Transportation Control Measure Replacement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the California State Implementation Plan (SIP) for ozone for the San Joaquin Valley, which was submitted to EPA on March 2, 1995. This direct final approval action approves the "Railroad Grade Separations" transportation control measure (TCM) adopted by the State of California on January 13, 1995. This TCM supersedes the "Controls on Extended Vehicle Idling" transportation control measure (TCM) in the federally-approved 1982 California ozone SIP. The intended effect of direct final approval of this SIP revision is to control emissions of ozone precursors and carbon monoxide in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or 1990 Act).

DATES: This direct final action is effective on October 17, 1995 unless adverse or critical comments are received by September 18, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State submittal and EPA's technical support document are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted SIP revision are available for inspection at the following locations:
Mobile Sources Section (A-2-1), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105
Environmental Protection Agency, Air Docket (6102), ANR 443, 401 "M" Street SW., Washington, DC 20460
California Air Resources Board, 2020 "L" Street, Sacramento, CA 92123
San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolomne Street, Suite #200, Fresno, CA 93721

FOR FURTHER INFORMATION CONTACT: Deborah Schechter, Mobile Sources Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1227.

SUPPLEMENTARY INFORMATION:

I. Background

On December 1, 1982, the State of California submitted the 1982 ozone and carbon monoxide (CO) SIP for the San Joaquin County portion of the San Joaquin Valley nonattainment area. EPA approved California's 1982 ozone and CO SIP for San Joaquin County and

published the **Federal Register** document on December 20, 1983 (48 FR 56215). The 1982 San Joaquin County SIP, or Air Quality Management Plan (AQMP), was adopted by the San Joaquin County Board of Supervisors on June 22, 1982. The AQMP included a transportation control measure (TCM) designated as "Controls on Extended Vehicle Idling". This TCM was intended to reduce vehicular emissions from extended idling at railroad crossings by requiring a signing system at all railroad crossings asking motorists to turn off their engines for waits longer than one minute. Site design improvements during the planning stage to mitigate circumstances where excessive idling could occur were also required in this TCM. This TCM was never implemented.

On March 20, 1991, the air pollution control districts in the San Joaquin Valley, including the San Joaquin County district, merged into the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). The SJVUAPCD was authorized to exercise all powers and carry out all duties of air pollution control districts within the Valley as provided by state and federal law.

On March 2, 1995, the California Air Resources Board (CARB) submitted to EPA a revision to the SIP for ozone for the San Joaquin Valley nonattainment area entitled San Joaquin Valley Transportation Control Measure Replacement. The SIP revision was adopted by the SJVUAPCD on September 14, 1994 and later by CARB on January 13, 1995. The SIP revision replaces the "Controls on Extended Vehicle Idling" TCM with the "Railroad Grade Separations" TCM. In its March 2, 1995 letter to EPA, CARB requested prompt handling of the submittal because of its implications for conformity determinations.

In a letter to the State dated July 24, 1995, EPA found the submittal of the San Joaquin Valley Transportation Control Measure Replacement complete.

II. Summary and Evaluation of SIP Revision

Section 176(c) of the Clean Air Act (CAA) prohibits any metropolitan planning organization (MPO) designated under section 134 of title 23 of the United States Code, from approving any transportation project, program, or plan which does not conform to a SIP approved under section 110 of the CAA. The federal transportation conformity regulation (40 CFR Part 51, subpart T) implements the transportation-related requirements of section 176(c). Section 51.418 of the regulation requires the