
ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 52

[WA17-1-5867a and WA16-1-5866a; FRL-5065-3]

Approval and Promulgation of Emission Statement Implementation
Plan; Washington State

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State Implementation Plan (SIP) submitted by the State of Washington for the purpose of implementing an emission statement program for stationary sources within the Vancouver Air Quality Maintenance Area and the Central Puget Sound Ozone Nonattainment Area. The implementation plan was submitted by the State to satisfy the Federal requirements for an emission statement program as part of the SIP for Washington State.

DATES: This final rule will be effective on November 14, 1994 unless adverse or critical comments are received by October 12, 1994. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, EPA, Region 10, Air Programs Development Section (AT-082), 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, EPA, 401 M Street, SW., Washington, DC 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air Programs Development Section, 1200 Sixth Avenue, Seattle, Washington 98101, and the Washington State Department of Ecology, 300 Desmond Drive, Olympia, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Stephanie Cooper, EPA, Region 10, Air Programs Development Section (AT-082), Seattle, Washington 98101, (206) 553-6917.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning and SIP requirements for ozone nonattainment and transport areas are set out in subparts I and II of part D of title I of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (CAA or "the Act"). EPA has published a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the CAA, including those State submissions for ozone transport areas within the States (see 57 FR 13498 (April 16, 1992)) ("SIP: General Preamble for

the Implementation of Title I of the Clean Air Act Amendments of 1990''), 57 FR 18070 (April 28, 1992) ('`Appendices to the General Preamble''), and 57 FR 55620 (November 25, 1992) ('`SIP: NO<INF>x Supplement to the General Preamble'')).

EPA has also issued a draft guidance document describing the requirements for the emission statement programs discussed in this document, entitled 'Guidance on the Implementation of an Emission Statement Program' (July, 1992). The Agency is also conducting a rulemaking process to modify part 40 of the CFR to reflect the requirements of the emission statement program.

Section 182 of the Act sets out a graduated control program for ozone nonattainment areas. Section 182(a) sets out requirements applicable in marginal nonattainment areas, which are also made applicable in subsections (b), (c), (d), and (e) to all other ozone nonattainment areas. Among the requirements in section 182(a) is a program in paragraph (3) of that subsection for stationary sources to prepare and submit to the State each year emission statements showing actual emissions of volatile organic compounds (VOC) and nitrogen oxides (NO<INF>x). This paragraph provides that the States are to submit a revision to their SIPs by November 15, 1992 establishing this emission statement program.

The CAA requires facilities to submit the first emission statement to the State within three years after November 15, 1990, and annually thereafter. EPA requests that the States submit the emission data to EPA through the Aerometric Information Retrieval System (AIRS). The minimum emission statement data should include: certification of data accuracy; source identification information; operating schedule; emissions information (to include annual and typical ozone season day emissions); control equipment information; and process data. EPA developed emission statements data elements to be consistent with other source and State reporting requirements. This consistency is essential to assist States with quality assurance for emission estimates and to facilitate consolidation of all EPA reporting requirements.

In addition to the submission of the emission statement data to AIRS, States should provide EPA with a status report that outlines the degree of compliance with the emissions statement program. Beginning July 1, 1993, States should report quarterly to EPA the total number of sources affected by the emission statement provisions, the number that have complied with the provisions, and the number that have not. This status report should also include the total annual and typical ozone season day emissions from all reporting sources, both corrected and non-corrected for rule-effectiveness (RE). States should include in their status report a list of sources that are delinquent in submitting their emission statement and that emit 500 tons per year (tpy) or more of VOC or 2500 tpy or more of NO<INF>x. This report should be a quarterly submittal until all the regulated sources have complied for the reporting year. Suggested submittal dates for the quarterly status reports are July 1, October 1, January 1, and April 1.

II. Analysis of State Submission

There are several key general and specific components of an acceptable emission statement program. Specifically, the State must submit a revision to its SIP and the emission statement program must meet the minimum requirements for reporting by the sources and the State. In general, the program must include, at a minimum, provisions for applicability, definitions, compliance, and specific source requirements detailed below.

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing its SIP, of which the emission statement program will

become a part. Sections 110(a)(1) and 110(a)(2) of the Act provide that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.

The State of Washington held a public hearing on January 5, 1993 in Vancouver, and January 6, 1993 in SeaTac to solicit public comment on the implementation plan for the Vancouver Air Quality Maintenance Area and the Central Puget Sound Ozone Nonattainment Areas, respectively. Following the public hearing, the plan was signed by the Director of the Washington State Department of Ecology (the Governor's designee) on January 22, 1993. EPA received an official revision to the SIP on January 28, 1993 which supersedes the SIP submittal of November 16, 1992. Additionally, replacement pages were submitted July 5, 1994 to clarify which sources are subject to the emission statement program.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). A letter dated April 8, 1993 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. In today's action, EPA approves Washington's emission statement program SIP submittal and invites public comment on the action.

B. Components of Emission Statement Program

1. Program Elements

Washington's emission statement program includes provisions covering applicability of the regulations, definitions for key terms used in the regulations, a compliance schedule for sources covered by the regulations, and the specific reporting requirements for sources. Under Washington State law, the Revised Code of Washington (RCW) sections 70.94.141 and 70.94.331 authorize Ecology and local authorities to "require access to records, books, files, and other information specific to the control, recovery, or release of air contaminants into the atmosphere." The Washington Administrative Code (WAC) 173-400-105 states that "the owner or operator of a source shall upon notification by the director of Ecology, maintain records . . . deemed necessary to determine whether the source is in compliance with applicable emission limitations and control measures."

2. Reporting Requirements for Sources

In accordance with the Act, Washington's emission statement program requires sources to submit certification that the information is accurate to the best knowledge of the individual certifying the statement, source identification information, operating information, process rate data, control equipment information, and emissions information.

3. Reporting Requirements for State

Washington's emission statement program includes a provision for the State to provide the identifying information for the sources covered by the emission statement program, the value for rule effectiveness utilized by the State in its SIP calculations, the source data elements entered into AIRS, and quarterly emission statement status reports. The quarterly reports should show the total number of facilities that met the State's emission statements program requirements and the number of facilities that failed to meet the requirements. Washington has submitted quarterly emissions statement status reports since July 1, 1993. The emissions statement status reports contain all required data elements. Ecology and the local air pollution control authorities require emission statement data for the annual emission inventory update.

4. Sources Covered

Section 182(a)(3)(B) of the Act requires that States with areas designated as nonattainment for ozone (O_3) require emission statement data from sources of volatile organic compounds (VOC) or

oxides of nitrogen (NO_x) in the nonattainment areas. Washington's Emission Statement Program applies the source reporting requirements as outlined in EPA's ``Draft Guidance on the Implementation of an Emission Statement Program.'` Sources subject to this requirement are: (1) Sources in O₃ nonattainment areas that emit 25 (tpy) or more of NO_x; and (2) sources in O₃ nonattainment areas that emit 25 tpy or more of VOC. Additionally, if a source emits at least the minimum established reporting level of VOC or NO_x (for example, 25 tpy or more in an O₃ nonattainment area), and the other pollutant is emitted at less than 25 tpy, then the other pollutant should also be included in the emission statement.

5. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA. The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). SIP provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C) of the Act).

The State of Washington has a program in its SIP that will ensure that the requirements of sections 182(a)(3)(B), 182(f), and 184(b)(2) of the Act for emission statement measures contained in the SIP are adequately enforced. Submission of emission statement data is enforced through the Southwest Air Pollution Control Authority (SWAPCA) and the Puget Sound Air Pollution Control Agency (PSAPCA). PSAPCA requires submission by April 15 of each year, and SWAPCA requires submission by March 15 of each year. EPA expects that the state's existing air enforcement program will be adequate.

III. Final Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submissions (see 57 FR 13565-13566). In this action, EPA is granting approval of the emission statement plan revision submitted to EPA on January 28, 1993 because it meets all of the applicable requirements of the CAA.

IV. Administrative Review

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 economic 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, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U. S. E. P. A.*, 427 U. S. 246, 256-66 (S. Ct. 1976); 42 U. S. C. 7410(a)(2).

The EPA is publishing this action 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, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will become

effective on November 14, 1994 unless, by October 12, 1994, adverse or critical comments are received.

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 SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action 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 November 14, 1994. 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 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: August 25, 1994.
Chuck Clarke,
Regional Administrator.

Part 52, 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. 7401-7671q.

Subpart WW--Washington

- 2. Section 52.2470 is amended by adding paragraph (c)(46) to read as follows:

Sec. 52.2470 Identification of plan.

* * * * *

(c) * * *

(46) On January 28, 1993 the State of Washington submitted a SIP revision for the purpose of implementing an emission statement program for stationary sources within the Vancouver Air Quality Maintenance Area and the Central Puget Sound Ozone Nonattainment Area. The implementation plan was submitted by the State to satisfy the Federal requirements for an emission statement program as part of the SIP for

Washington State.

(i) Incorporation by reference.

(A) Letters dated January 22, 1993 from the Director of the Washington Department of Ecology to EPA Region 10 amending the Washington SIP for both the Vancouver and Central Puget Sound areas.

(B) ``Supplement to the SIP for Washington State, A Plan for Attaining and Maintaining National Ambient Air Quality Standards for Ozone in Central Puget Sound,`` sections 6.0, 6.1, and 6.2, adopted January 22, 1993.

(C) ``Supplement to the SIP for Washington State, A Plan for Attaining and Maintaining National Ambient Air Quality Standards for Ozone in the Vancouver Air Quality Maintenance Area,`` sections 7.0, 7.1, 7.2, and 7.3, adopted January 22, 1993.

* * * * *

[FR Doc. 94-22400 Filed 9-9-94; 8:45 am]

BILLING CODE 6560-50-F