

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 in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 22, 1999.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

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 *et seq.*

#### Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(164)(i)(B)(2), (179)(i)(E)(2), (182)(i)(F), (186)(i)(E), (199)(i)(D)(4), (224)(i)(C)(2), (239)(i)(C), and (239)(i)(D) introductory text to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(164) \* \* \*

(i) \* \* \*  
(B) \* \* \*

(2) Appendices A and B adopted on February 22, 1984.

\* \* \* \* \*

(179) \* \* \*  
(i) \* \* \*

(E) \* \* \*

(2) Rule 4.10 adopted on January 24, 1989.

\* \* \* \* \*

(182) \* \* \*  
(i) \* \* \*

(F) Modoc County Air Pollution Control District.

(I) Rules 4.1–2, 4.6, 4.6–1, and 4.9 adopted on January 3, 1989.

\* \* \* \* \*

(186) \* \* \*  
(i) \* \* \*

(E) Santa Barbara County Air Pollution Control District.

(1) Rule 105 adopted on July 30, 1991.

\* \* \* \* \*

(199) \* \* \*

(i) \* \* \*

(D) \* \* \*

(4) Rule 1010 adopted on June 18, 1992 and Rule 1130 adopted on June 18, 1992 and amended on December 17, 1992.

\* \* \* \* \*

(224) \* \* \*

(i) \* \* \*

(C) \* \* \*

(2) Rule 103 amended on June 28, 1995.

\* \* \* \* \*

(239) \* \* \*

(i) \* \* \*

(C) Kern County Air Pollution Control District.

(I) Rules 101, 112, 113, 114, and 115 amended on May 2, 1996.

(D) Ventura County Air Pollution Control District.

\* \* \* \* \*

[FR Doc. 99–13657 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[TX83–1–7340a; FRL–6349–9]

#### Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan (SIP) Addressing Sulfur Dioxide in Harris County

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

**ACTION:** Direct final rule.

**SUMMARY:** We are approving two revised Commission Orders modifying the sulfur dioxide (SO<sub>2</sub>) allowable emissions at two stationary sources in Harris County, Texas. The Orders are separate, enforceable agreements between Simpson Pasadena Paper Company, Lyondel-Citgo Refining Company, and the Texas Natural Resource Conservation Commission (TNRCC). This action will incorporate these two Orders into the federally approved State Implementation Plan (SIP). The intention of this action is to regulate SO<sub>2</sub> emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (the Act).

**DATES:** This action is effective on August 2, 1999 without further notice, unless EPA receives relevant adverse comments by July 6, 1999. 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:** Written comments must be submitted to Mr. Thomas Diggs, Chief of Air Planning Section, EPA Region 6, 1445 Ross Avenue, Suite 1200 (6PD–L), Dallas, Texas 75202–2733. Copies of the technical support document are available for public review at the EPA Region 6 office during normal business hours. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 6, Air Planning Section, 1445 Ross Avenue, Suite 1200, 6PD–L, Dallas, Texas 75202–2733, telephone (214) 665–7214.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753, telephone (512) 239–1461.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. **FOR FURTHER INFORMATION CONTACT:** Ms. Petra Sanchez, Air Planning Section, (6PD–L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, telephone: (214) 665–6686.

#### SUPPLEMENTARY INFORMATION:

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#### I. Background Information

##### A. What Action Is EPA Taking in This Rulemaking?

The EPA is adopting two Agreed Commission Orders containing new emission limits at two facilities into the Harris County SIP for SO<sub>2</sub>. The facilities are Simpson Pasadena Paper Company located at North Shaver Street at

Washburn Tunnel in Houston, Texas, and Lyondel-Citgo Refining Company, located at 12000 Lawndale, also in Houston, Texas. Changes to the emission limits were approved by the TNRCC through "Agreed Commission Orders." This action adopts these Orders into the SIP and makes them federally enforceable. In the original SIP for Harris County, emission limits were developed for thirteen non-permitted sources, including Simpson and Lyondel. The EPA approved the Harris County SIP on March 6, 1995 (60 FR 12125), and the contents in the unrevised portions of the SIP remain the same. The reader is referred to this **Federal Register** document for additional background.

#### *B. Why Were Changes in Emission Rates Necessary?*

##### **Lyondel-Citgo Refining Company (LCR)**

The LCR revision corrects a minor technical problem found with the calculation for the SO<sub>2</sub> emission rate. In the original 1994, SIP submittal, hourly LCR allowable emission rates used for dispersion modeling calculated the annual average fuel gas rates instead of the LCR grandfathered firing rates, resulting in a maximum fuel gas hydrogen sulfide concentration of 160 parts per million (ppm) by volume. The annual average fuel gas emission rates were incorrectly converted to an hourly rate without taking into consideration grandfathered maximum hourly limits for the emission source. Adjusting the emission rates, however, would cause the combined emissions to rise from 199.42 to 263.39 pounds per hour (lbs/hr). Lyondel-Citgo Refining Company, therefore, submitted a request to modify their Agreed Commission Order to reflect their corrected emission rates. The request, with the supporting documentation and a revised dispersion modeling analysis to increase the SO<sub>2</sub> emission rates, was further evaluated by the TNRCC and then by EPA. The analysis demonstrates that the new emission rates from LCR will not cause a violation of the National Ambient Air Quality Standards (NAAQS) for SO<sub>2</sub>.

The modeling results predict worst-case concentrations for the 3-hour, 24-hour, and annual averaging periods of 908 ug/m<sup>3</sup>, (for the secondary 3-hour), 336 ug/m<sup>3</sup>, (for the primary 24-hour standard) and 78 ug/m<sup>3</sup>, (for the primary annual standard) respectively. All concentrations are below the applicable NAAQS of 1300 ug/m<sup>3</sup>, 365 ug/m<sup>3</sup>, and 80 ug/m<sup>3</sup> respectively.

The Industrial Source Complex Short-Term 3 model, and 5 years of meteorological data (i.e., 1981 through

1985) from the Houston Intercontinental surface station and the Lake Charles upper-air station were used for the analysis. Two emission inventories were used in the modeling, based on the original inventory provided by HRM and its contractor, Radian Incorporated. The second scenario used the updated inventory submitted by LCR. The differences from the first and second scenarios were observed, with respect to the 3-hour, 24-hour and annual SO<sub>2</sub> NAAQS. In addition, the differences from the first and second scenarios were added as an increment to the original Radian model results. The results predicted concentrations below the SO<sub>2</sub> NAAQS.

##### **Simpson Pasadena Paper Company**

Of the seven emission points identified in the original Commission Order for Simpson Pasadena, the largest is the No.6 Kraft Recovery Boiler (SN15, 400 pounds of SO<sub>2</sub> per hour). Simpson Pasadena submitted a request to modify their order by raising the emission limit on the No. 6 Kraft Recovery Boiler from 400 pounds/hour (lbs/hr) to 600 lbs/hr, when Boiler No. 7 is not operating. As a result, the maximum allowable SO<sub>2</sub> emissions from the two furnaces would decrease from 650 lbs/hr (400 and 250 lbs/hr, for No. 6 and No. 7, respectively) to 600 lbs/hr for one furnace. The revised order allows for this averaging on a permanent basis, whenever maintenance or malfunctions occur. Simpson Pasadena, however, is still responsible for notifying the TNRCC office whenever these temporary changes in emissions will occur, and provide an approximate duration time.

The air quality impact analysis submitted with the SIP revision request demonstrated that the net change in emissions from 650 lbs/hr to 600 lbs/hr would not cause or contribute to a violation of the SO<sub>2</sub> NAAQS.

The modeling approach was conducted in two phases. The first phase compared the predicted concentrations from the net change in emissions to the applicable SO<sub>2</sub> significance levels to determine if the modification was significant. The impacts were above the significance levels for the 3-hour and 24-hour averaging periods. Thus the second phase, a full analysis, was conducted using the complete emission inventory from the original attainment demonstration.

The modeling results predict worst-case concentrations for the 3-hour and 24-hour averaging periods of 691 micrograms/cubic meter (ug/m<sup>3</sup>) and 227 ug/m<sup>3</sup>, respectively. These

concentrations demonstrated they were below the applicable NAAQS.

#### *C. What Is a SIP?*

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS established by the EPA. These ambient standards are established under section 109 of the Act and they address six criteria pollutants: 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 State has a SIP designed to protect its air quality. These SIPs can be extensive, containing regulations, enforceable emission limits, emission inventories, monitoring networks, and modeling demonstrations. The Texas SIP contains various "Agreed Commission Orders" (Orders) to meet the SIP requirements and other State statutory requirements. The Orders are developed to contain specific conditions for a particular source and can provide specific conditions such as, emission limits, hours of operation, record keeping requirements, production rates, compliance demonstration requirements, etc., for a particular source. Once the Orders are adopted into the SIP, they become federally enforceable.

#### *D. What Are the Procedural Requirements Texas Must Follow for EPA Approval?*

The Act requires States to observe certain procedural requirements while developing SIPs for submission to the EPA. Section 110(l) of the Act requires that a revision to a SIP must be adopted by such State after reasonable notice and public hearing. The EPA must also determine whether a submittal is complete and warrants further action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are found at 40 Code of Federal Regulations (CFR) part 51, appendix V. The submittal was determined to be administratively complete by EPA through a cover letter to the Governor of Texas on April 18, 1997.

The State of Texas held a public hearing on March 31, 1997, for public comment on these rule revisions. The SIP revision was then submitted by the Governor of Texas to the EPA by cover letter dated May 29, 1997. While there are no SO<sub>2</sub> nonattainment areas in Texas, the SIP must demonstrate

attainment and maintenance of the NAAQS.

All State regulations and supporting information approved by the EPA under section 110 of the Act are incorporated into the federally approved SIP. Records of such SIP actions are maintained in the 40 CFR part 52. The actual State regulations which were approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that the EPA has approved a given State regulation with a specific effective date.

#### *E. What Are the Health Effects Associated With This Criteria Pollutant?*

Sulfur dioxide belongs to the family of sulfur oxide gases. These gases are formed when fuel containing sulfur, such as coal and oil, is burned and during metal smelting, and other industrial process. Sulfur dioxide is a rapidly-diffusing reactive gas that is very soluble in water. Sulfur dioxide and oxides of nitrogen are the major precursors to acidic deposition (acid rain), and are associated with the acidification of lakes and streams, corrosion of buildings and monuments. They are also associated with reduced visibility. Sulfur dioxide in the Houston area is emitted principally from combustion, or processing, of sulfur-containing fossil fuels and ores. At elevated concentrations, sulfur dioxide can adversely affect human health. The major health concerns associated with exposure to high concentrations of SO<sub>2</sub> include effects on breathing, respiratory illness, alterations in the lungs' defenses, and aggravation of existing cardiovascular disease. Sulfur dioxide can also produce damage to the foliage of trees and agricultural crops.

#### *F. What Are the NAAQS for SO<sub>2</sub>?*

The primary national ambient air quality standard for sulfur oxides, measured as SO<sub>2</sub>, is 0.14 ppm, or 365 ug/m<sup>3</sup>, averaged over a period of 24 hours and not to be exceeded more than once per year, and an annual standard of 0.030 ppm, or 80 ug/m<sup>3</sup>, never to be exceeded. The secondary standard for SO<sub>2</sub> is 0.50 ppm, or 1300 ug/m<sup>3</sup> averaged over a three-hour period. The secondary standard may not be exceeded more than once per year.

## **II. Final Action**

The EPA has evaluated the submitted Agreed Orders and their provisions along with the modeling demonstration to support the revised emission limits and has determined that they are consistent with the Act, EPA regulations, and EPA policy. Therefore, the revised Agreed Order Nos. 94-15 for

Lyondel-Citgo, Refining Company, Ltd., and 94-22 for Simpson Pasadena Paper Company are being approved under section 110(k)(3) of the Act as meeting the requirements of section 110(a) and are acceptable revisions to the SIP. 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 the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. This rule will be effective August 2, 1999 without further notice unless, by July 6, 1999, relevant adverse 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 the proposed action. The EPA will not institute a second comment period. 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 August 2, 1999.

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

## **III. Administrative Requirements**

#### *A. Executive Order (E.O.) 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

#### *B. Executive Order 12875*

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments,

and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

#### *C. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

#### *D. Executive Order 13084*

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on

matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

#### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act 5 U.S.C. 600 *et seq.* generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies 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 small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### *F. Unfunded Mandates*

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 rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA 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 EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual 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 requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### *G. Submission to Congress and the Comptroller General*

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. The 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**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

#### *H. Petitions for Judicial Review*

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 1999.

Filing a petition for reconsideration with 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).)

#### **Lists of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by Reference, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: April 14, 1999.

**Sammuel Coleman,**

*Acting Regional Administrator, Region 6.*

40 CFR Part 52 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 SS—Texas**

2. Section 52.2270 is amended by adding paragraph (116) to read as follows:

#### **§ 52.2270 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(116) A revision to the Texas State Implementation Plan (SIP) to include two modified Agreed Orders limiting sulfur dioxide (SO<sub>2</sub>) allowable emissions at two facilities in Harris County, submitted by the Governor by cover letter dated May 29, 1997.

(i) Incorporation by reference.

(A) TNRCC Docket No. 96-1188-AIR Order Modifying Commission Order No. 94-15 for Lyondel-Citgo Refining Company, LTD., as adopted by the TNRCC on June 29, 1994, and modified on July 31, 1996;

(B) TNRCC Docket No. 96-1187-AIR, Order Modifying Commission Order No. 94-22 for Simpson Pasadena Paper Company, as adopted by the TNRCC on June 29, 1994, and modified on July 31, 1996.

(ii) Additional material.

TNRCC submittal to the EPA dated May 29, 1997, entitled, "Revisions to the SIP Concerning Sulfur Dioxide in Harris County."

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BILLING CODE 6560-50-P

#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 62**

[SD-001-0003a and SD-001-0004a; FRL-6351-8]

#### **Approval and Promulgation of State Plans for Designated Facilities and Pollutants; South Dakota Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA approves the South Dakota plan and regulations for controlling landfill gas emissions from existing municipal solid waste (MSW) landfills. South Dakota's regulations require existing MSW landfills to install a landfill gas collection and control system, if the MSW landfill's design capacity and non-methane organic compound (NMOC) emissions are above certain thresholds. South Dakota submitted its original plan to EPA on May 2, 1997 and then submitted revisions to the plan on May 6, 1999.