

applicable to the painting operations at Swenson's plant located in Lindenwood, Ogle County, Illinois.

In the rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal, because EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments in response to this proposed rule, EPA will take no further action on this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule.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.

**DATES:** Written comments must be received on or before June 28, 2004.

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in the Addresses Section and Part(I)(B) of the Supplementary Information section of the related direct final rule which is published in the Rules section of this **Federal Register**.

**ADDRESSES:** Written comments should be sent to: J. Elmer Bortzer, Chief, Criteria Pollutant Section, Air Programs Branch, United States Environmental Protection Agency, Mailcode AR-18J, 77 West Jackson Boulevard, Chicago, Illinois 60604. [bortzer.jay@epa.gov](mailto:bortzer.jay@epa.gov).

**FOR FURTHER INFORMATION CONTACT:** Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch, United States Environmental Protection Agency, Mailcode AR-18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328. [panos.christos@epa.gov](mailto:panos.christos@epa.gov).

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please contact Christos Panos at (312) 353-8328 before visiting the Region 5 office.)

Dated: May 7, 2004.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 04-11926 Filed 5-26-04; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Region 2 Docket No. R02-OAR-2004-NJ-0001, FRL-7667-7]

#### Finding of Failure To Implement a State Implementation Plan; New Jersey Portions of the New York—Northern New Jersey—Long Island and Philadelphia—Wilmington—Trenton Nonattainment Areas; Ozone

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to find that New Jersey has not fully implemented the 1-hour Ozone State Implementation Plan that EPA approved for two nonattainment areas, the New Jersey portions of the New York—Northern New Jersey—Long Island nonattainment area and the Philadelphia—Wilmington—Trenton nonattainment area. If EPA finalizes this proposed determination, New Jersey will be required to correct the identified deficiencies within 18 months of a final determination, or the first set of sanctions will be imposed pursuant to sections 179(a) and (b) of the Clean Air Act and 40 CFR 52.31.

**DATES:** Comments must be received on or before June 28, 2004.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R02-OAR-2004-NJ-0001 by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. Agency Web site: <http://docket.epa.gov/rmepub/> Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov).

4. Fax: (212) 637-3901.

5. Mail: "RME ID Number R02-OAR-2004-NJ-0001", Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

6. Hand Delivery or Courier. Deliver your comments to: Raymond Werner,

Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

**Instructions:** Direct your comments to Regional Material in EDocket (RME) ID Number R02-OAR-2004-NJ-0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in EDocket (RME), [regulations.gov](http://regulations.gov), or e-mail. The EPA RME Web site and the federal [regulations.gov](http://regulations.gov) Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Air Programs Branch, Environmental Protection

Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Paul R. Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3711 or [truchan.paul@epa.gov](mailto:truchan.paul@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

### **I. What Is Required by the Clean Air Act of Areas Classified as Nonattainment for Ozone and How Do These Requirements Apply to New Jersey?**

Section 182 of the Clean Air Act (Act) identifies specific requirements for State Implementation Plans (SIP) for areas classified as nonattainment for the 1-hour ozone standard. Section 182 also establishes schedules for submission of SIP revisions to EPA by the states. The specific requirements and deadlines vary depending upon the severity of the ozone problem. This action applies to the New Jersey portion of two severe ozone nonattainment areas: the New York-Northern New Jersey-Long Island Area, and the Philadelphia-Wilmington-Trenton Area. For purposes of this action these areas will be referred to as, respectively, the Northern New Jersey ozone area and the Trenton ozone area. The counties located within the Northern New Jersey area are: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union. The counties within the Trenton area are: Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem. Under section 182(c)(2) and (d) of the Act, states with severe nonattainment areas were required to submit by November 15, 1994 demonstrations of how the areas would attain the 1-hour standard. In addition, states needed to demonstrate how they would achieve reductions in volatile organic compound (VOC) emissions of nine percent for each three-year period until the attainment year, this latter requirement is called the rate-of-progress plan. In some cases, oxides of nitrogen (NO<sub>x</sub>) emission reductions can be substituted for the required VOC emission reductions.

States are required to develop any additional measures to further reduce emissions that are required to attain the

air quality standard by the attainment deadlines specified in the Act. On December 16, 1999 (64 FR 70380), EPA proposed approval of New Jersey's SIP demonstrating attainment of the 1-hour ozone standard for the two nonattainment areas, if, among other things, the State submitted an enforceable commitment to adopt additional control measures to fill an emission reduction shortfall identified by EPA in its review. To assist several states, including New Jersey, in developing additional emission control strategies, the Ozone Transport Commission (OTC) developed model rules to control emissions from six types of sources and estimated emission reduction benefits that would be achieved from implementing these model rules. These model rules are commonly referred to as the Ozone Transport Commission measures, or OTC measures. These model rules were designed for use by states in developing their own regulations to achieve the additional VOC and NO<sub>x</sub> emission reductions needed to eliminate these shortfalls.

On February 4, 2002 (67 FR 5152), EPA approved New Jersey's 1-hour ozone attainment demonstration SIP. This approval was based, in part, on enforceable commitments made by New Jersey in a SIP revision dated April 26, 2000. New Jersey committed to adopt additional control measures by October 31, 2001, to close the shortfalls in emission reductions identified by EPA. New Jersey indicated, as part of its commitment, that it expected the additional emission reductions would be achieved by adopting measures recommended during the OTC process which was completed on March 31, 2001.

In a letter dated December 11, 2001, New Jersey provided an update on the rulemaking schedule, which was to be published in the New Jersey Register, that included the six OTC measures. Based on this information, EPA proceeded with a final rulemaking approval of New Jersey's 1-hour ozone attainment demonstration SIP even after New Jersey missed the October 31, 2001 deadline, because at that time, EPA determined New Jersey was making sufficient progress to support approval of the commitment.

### **II. What Portion of the Approved SIP Is EPA Finding New Jersey Is Not Fully Implementing?**

While New Jersey has made progress in implementing its ozone SIP, the State has missed the deadline to adopt and submit the additional control measures necessary to meet the emission

reduction shortfall. The State indicated in its September 12, 2001 SIP revision, that the six OTC measures would result in sufficient emission reductions to meet the EPA identified emission shortfalls. To date, four control measures have been adopted and submitted as SIP revisions, but are insufficient by themselves to provide the emission reductions needed to attain the one hour ozone standard. Consequently, EPA is proposing to find that New Jersey is not fully implementing its approved attainment demonstration SIP because it has not met its commitment to adopt additional control measures, by October 31, 2001, which are needed to attain the 1-hour ozone standard.

### **III. What Are the Consequences if EPA Makes Final This Proposed Finding of Failure To Implement?**

Under the authority of section 179(a)(4) of the Act, if EPA makes a finding that provisions of an approved plan are not being implemented, then the deficiencies identified in the finding must be corrected within 18 months of the final finding or sanctions will begin to apply. There are two types of sanctions: Highway Sanctions (section 179(b)(1)) and Offset Sanctions (section 179(b)(2)).

EPA promulgated, at 40 CFR part 52, regulations to implement the sanction requirements of section 179 of the Act. 40 CFR 52.31(d)(1) provides that the offset sanction apply when a state has not corrected the deficiencies identified in the finding within 18 months of the effective date of the final finding. This sanction requires any entity or individual that is subject to nonattainment new source review and is constructing a new facility or modifying an existing facility over a certain size to reduce emissions in the area in which it is located by two tons for every one ton of VOC and/or NO<sub>x</sub> that the new/modified facility will emit.

The current offset ratio in the two New Jersey nonattainment areas for VOC and NO<sub>x</sub> is 1.3 to 1. If EPA takes final action making a finding of failure to implement and New Jersey has not corrected the deficiencies identified in the final finding within 18 months of the effective date of that finding, then the 2 to 1 offset sanction will apply in the Northern New Jersey ozone area and the Trenton ozone area.

40 CFR 52.31(d)(1) further provides that the section 179(b)(2) highway sanction will apply if New Jersey does not correct the deficiencies identified in the finding within six months after the offset sanction is imposed. This sanction prohibits the U.S. Department

of Transportation from approving or funding all but a few specific types of transportation projects.

The sanctions time clock will be stopped or imposed sanctions lifted only if EPA determines, after an opportunity for public comment, that the deficiencies which resulted in today's failure to implement finding have been corrected. The time clock may be stayed or the imposition of sanctions may be deferred based on a proposed determination that the State has corrected the implementation deficiencies (40 CFR 52.31(d)(4)). EPA will be working with New Jersey to correct this deficiency as quickly as possible to ensure that sanctions need not be imposed.

#### IV. Statutory and Executive Order Reviews

##### A. Executive Order 12866, Regulatory Planning and Review

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

##### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* No information is required to be collected, EPA is just proposing to find that the State is not fully implementing its approved SIP. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

##### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. The sanctions provided for pursuant to section 179(b) for failure to implement under section 110 apply only to new or modified major stationary sources subject to section 173 of the Clean Air Act.

##### D. Unfunded Mandates Reform Act

Under sections 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 costs to state, local, or tribal governments in the aggregate; or to the 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.

EPA has determined that the finding of failure to implement action proposed 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 proposes to find failure to implement pre-existing requirements under state or local law, and imposes no new requirements on the state. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

##### E. Executive Order 13132, Federalism

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule will 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, because it does not establish any new requirement with which the state must comply nor does it alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Rather, consistent with the Clean Air Act requirements, this action proposes that the state is not complying with provisions already approved in the SIP. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000). Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

*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 Executive Order 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 Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new

regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

**Dated:** May 17, 2004.

**Jane M. Kenny,**

*Regional Administrator, Region 2.*

[FR Doc. 04-12018 Filed 5-26-04; 8:45 am]

**BILLING CODE 6560-50-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1, 20, and 43**

[WC Docket No. 04-141, FCC 04-81]

**Local Telephone Competition and Broadband Reporting**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Federal Communications Commission seeks comment about whether it should extend and modify the FCC Form 477 local competition and broadband data gathering program, established by the Commission's *Data Gathering Order* published Wednesday, April 12, 2000 (65 FR 19675).

**DATES:** Comments are due on or before June 28, 2004, and reply comments are due on or before July 28, 2004. Written comments on the proposed information collections must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before July 28, 2004.

**ADDRESSES:** All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications

Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503 via the Internet to *Kristy.L.LaLonde@omb.eop.gov* or by fax to (202) 395-5167. Parties are also requested to send two additional paper copies of their filings to Mikelle Mora, Industry Analysis and Technology Division, 455 Twelfth Street, SW., Sixth Floor, Washington DC 20554.

**FOR FURTHER INFORMATION CONTACT:**

Ellen Burton, Assistant Chief, James Eisner, Senior Economist, or Thomas J. Beers, Deputy Chief, Industry Analysis and Technology Division, Wireline Competition Bureau, at (202) 418-0940. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at (202) 418-0214, or via the Internet at *Judith-B.Herman@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 04-141, adopted on March 31, 2004, and released on April 16, 2004. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC 20554. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365. The full text of the NPRM may also be purchased from the Commission's duplicating contractor, Qualex International, Room CY-B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or e-mail at *qualexint@aol.com*. This NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

**Paperwork Reduction Act**

This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to