

accepted standards of clinical practice during VA employment as to raise reasonable concern for the safety of patients. Even so, it would seem that in almost every case in which substance abuse is found, we would also be able to determine that it affects the individual's ability to perform appropriately as a health care provider in the patient care environment. Further, currently employed individuals who are identified as substance abusers are always encouraged by VA to obtain rehabilitation assistance, and there is no need to make a special recommendation to State Licensing Boards since we are aware that State Licensing Boards routinely provide similar encouragement.

Executive Order 12866

This rule has been reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The rule will affect only individuals and will not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

There are no applicable Catalog of Federal Domestic Assistance program numbers.

List of Subjects in 38 CFR Part 47

Health professions.

Approved: April 22, 1998.

Togo D. West, Jr.,
Acting Secretary.

For the reasons set forth in the preamble, 38 CFR part 47 is amended as follows:

PART 47—POLICY REGARDING REPORTING HEALTH CARE PROFESSIONALS TO STATE LICENSING BOARDS

1. The authority citation for part 47 continues to read as follows:

Authority: Pub. L. 99-166, 99 Stat. 941; 38 U.S.C. 501.

2. The part heading for part 47 is revised to read as shown above.

3. In part 47, both subpart A and subpart B headings are removed.

4. In § 47.1, paragraph (a) is removed; paragraphs (b) through (h) are redesignated as paragraphs (a) through (g), respectively; new paragraphs (h) and (i) are added, and the authority citation is revised, to read as follows:

§ 47.1 Definitions.

* * * * *

(h) *Currently employed licensed health care professional* means a licensed health care professional who is on VA rolls.

(i) *On VA rolls* means on VA rolls, regardless of the status of the professional, such as full-time, part-time, contract service, fee-basis, or without compensation.

(Authority: 38 U.S.C. 501, 7401-7405; Section 204(b) of Pub. L. 99-166, 99 Stat. 952-953; Pub. L. 99-660, 100 Stat. 3743.)

§ 47.2 [Removed]

5. Section 47.2 is removed.

§ 47.3 [Redesignated as § 47.2]

6. Section 47.3 is redesignated as § 47.2.

7. The newly redesignated § 47.2 is revised to read as follows:

§ 47.2 Reporting to State Licensing Boards.

It is the policy of VA to report to State Licensing Boards any currently employed licensed health care professional or separated licensed health care professional whose clinical practice during VA employment so significantly failed to meet generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients. The following are examples of actions that meet the criteria for reporting:

(a) Significant deficiencies in clinical practice such as lack of diagnostic or treatment capability; errors in transcribing, administering or documenting medication; inability to perform clinical procedures considered basic to the performance of one's occupation; performing procedures not included in one's clinical privileges in other than emergency situations;

(b) Patient neglect or abandonment;

(c) Mental health impairment sufficient to cause the individual to behave inappropriately in the patient care environment;

(d) Physical health impairment sufficient to cause the individual to provide unsafe patient care;

(e) Substance abuse when it affects the individual's ability to perform appropriately as a health care provider or in the patient care environment;

(f) Falsification of credentials;

(g) Falsification of medical records or prescriptions;

(h) Theft of drugs;

(i) Inappropriate dispensing of drugs;

(j) Unethical behavior or moral turpitude;

(k) Mental, physical, sexual, or verbal abuse of a patient (examples of patient

abuse include intentional omission of care, willful violation of a patient's privacy, willful physical injury, intimidation, harassment, or ridicule); and

(l) Violation of research ethics.

(Authority: 38 U.S.C. 501; 7401-7405; Section 204(b) of Pub. L. 99-166, 99 Stat. 952-953; Pub. L. 99-660, 100 Stat. 3743.)

[FR Doc. 98-11466 Filed 4-29-98; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY25-2-173b, FRL-5995-4]

Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The SIP revision consists of amendments to the New York Code of Rules and Regulations. This revision was submitted to comply with the gasoline vapor recovery provisions for gasoline service stations in the Clean Air Act (the Act). The intended effect of this action is to approve a program required by the Act which will result in emission reductions that will help achieve attainment of the national ambient air quality standard (NAAQS) for ozone.

DATES: This rule is effective on June 29, 1998 unless relevant adverse comments are received by June 1, 1998. If EPA receives relevant adverse comments, a timely withdrawal will be published in the **Federal Register**.

ADDRESSES: All comments should be addressed to: Ronald J. Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency,
Region II Office, Air Programs Branch,
290 Broadway, 25th Floor, New York,
New York 10007-1866

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

SUPPLEMENTARY INFORMATION:

I. Background

On November 28, 1989 (54 FR 48888) EPA approved a revision to New York's State Implementation Plan (SIP) for ozone which added requirements for the control of gasoline vapors resulting from the refueling of vehicle fuel tanks at gasoline service stations (known as Stage II) and were adopted by the State on March 2, 1988 as revisions to Part 230 of title 6 of the New York Code of Rules and Regulations of the State of New York, entitled, "Gasoline Dispensing Sites and Transport Vehicles." On July 8, 1994, the New York State Department of Environmental Conservation (NYSDEC) submitted to EPA a SIP revision for ozone consisting of amendments to Part 230. These revisions became effective on September 22, 1994. These revisions to Part 230 expand the geographic applicability of the Stage II requirements and address section 182(b)(3) of the Clean Air Act (the Act). Section 182(b)(3) mandates that states submit a revised SIP by November 15, 1992 which requires owners or operators of gasoline dispensing systems to install and operate Stage II gasoline vehicle refueling vapor recovery systems in ozone nonattainment areas designated as moderate and above.

The New York portion of the "New Jersey, New York, Connecticut interstate metropolitan air quality control region" (NYCMA—composed of New York City and the counties of Nassau, Suffolk, Westchester and Rockland) was previously designated nonattainment for ozone. Under the Act as amended in 1990, EPA included these areas as part of the New York-Northern New Jersey-Long Island Nonattainment Area and designated it with an ozone classification of severe nonattainment.

On November 6, 1991 (56 FR 56694), EPA extended the boundaries of the New York-Northern New Jersey-Long Island Nonattainment Area to include Putnam and Orange counties. New York, however, requested time to study the boundaries and classification

pursuant to section 187(d)(4)(A)(iv) of the Act. Based on New York's study, EPA revised the designations on November 30, 1992 (57 FR 56762). EPA included part of Orange County or the Lower Orange County Metropolitan Area (LOCMA) consisting of the towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick and Woodbury in the New York-Northern New Jersey-Long Island Nonattainment Area. This entire area is classified as severe nonattainment.

In addition, on October 6, 1994 (59 FR 50848), EPA reclassified the Poughkeepsie ozone nonattainment area (includes the counties of Dutchess, Putnam and that portion of Orange not discussed previously) to moderate nonattainment. It had been designated as marginal nonattainment. Section 182(b)(3) of the Act requires areas classified as moderate to implement Stage II controls unless and until EPA promulgates on-board vapor recovery regulations pursuant to section 202(a)(6) of the Act. However, many moderate ozone nonattainment areas may need to continue or adopt Stage II in order to satisfy other air quality requirements. The final rule for on-board vapor recovery systems has been promulgated and was published in the **Federal Register** on April 6, 1994 (59 FR 16262). However, the Stage II vapor recovery program is still required in the NYCMA and LOCMA areas since they are designated as severe nonattainment areas for ozone. Therefore, only the NYCMA and LOCMA ozone nonattainment areas are addressed in the July 8, 1994 SIP revision of Part 230 in which EPA is approving.

II. Stage II—Gasoline Vapor Recovery

Section 182(b)(3) of the Act mandates that states submit a revised SIP by November 15, 1992 that requires owners or operators of gasoline dispensing systems to install and operate Stage II gasoline vehicle refueling vapor recovery systems in ozone nonattainment areas designated as moderate and above.

Pursuant to section 182(b)(3) of the Act, EPA is required to issue guidance as to the effectiveness of Stage II systems. In November 1991, EPA issued technical and enforcement guidance to meet this requirement. In addition, on April 16, 1992, EPA published the "General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990" ("General Preamble") (57 FR 13498). The guidance documents and the General Preamble interpret the Stage II statutory requirement and indicate what EPA believes a state submittal needs to

include to meet that requirement. These two documents are entitled "Technical Guidance-Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (EPA-450/3-91-022) and "Enforcement Guidance for Stage II Vehicle Refueling Control Programs." The reader is referred to the General Preamble for a detailed explanation of Stage II requirements.

The Stage II vapor recovery program requires owners and operators of gasoline dispensing facilities that dispense greater than 10,000 gallons of fuel per month (50,000 gallon per month in the case of an independent small business marketer) to install and operate gasoline vehicle refueling vapor recovery systems. Vapor recovery systems control the release of volatile organic compounds, benzene, and toxics emitted during the refueling process.

States must require Stage II to be effective under a specified phase-in schedule of 6 months after the state adopts the required regulation for stations constructed after November 15, 1990; one year after the adoption date for stations dispensing at least 100,000 gallons per month, (as calculated over a 2-year period before the adoption date); and two years after the adoption date for all other facilities required to install controls.

As a separate requirement, section 184(b)(2) of the Act mandated EPA to complete a study identifying control measures capable of achieving emission reductions comparable to those achievable through vehicle refueling controls contained in section 182(b)(3) of the Act, and required such measures or such vehicle refueling controls to be implemented in all areas in the Ozone Transport Region (OTR), e.g., Northeast OTR. The entire State of New York is included in the Northeast OTR. EPA completed the "Stage II Comparability Study for the Northeast OTR" on January 13, 1995, which requires New York to adopt and submit a SIP revision by January 13, 1996 for either Stage II or a comparable measure(s) for those areas currently not controlled by the Stage II requirements in Part 230 (i.e., all upstate areas of New York). New York is currently in the process of addressing this requirement, therefore, it was not included in the July 8, 1994 SIP revision.

III. State Submittal

Part 230—Gasoline Dispensing Sites and Transport Vehicles

A. The revisions to Part 230 expands the applicability of Stage I vapor controls (control of gasoline vapors

during storage tank filling) statewide to all gasoline facilities with an annual throughput of 120,000 gallons and includes additional requirements for gasoline transport vehicles which service these facilities located in New York State.

B. Part 230 also expands Stage II controls to smaller stations in the NYCMA and into the LOCMA. Stage II was previously not required in the LOCMA and required only for stations with annual throughputs over 250,000 gallons in the NYCMA, but the Act required this strategy in all severe nonattainment areas for stations over 120,000 gallons annual throughput. Therefore, New York revised Part 230 to accommodate this lower limit in the NYCMA and added these requirements in the LOCMA.

C. New York requires that Stage II systems be tested and approved using a testing program that is based on the California Air Resources Board program.

D. New York requires sources to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and at five year intervals or upon modification of a facility.

E. With respect to recordkeeping, New York's revisions to Part 230 address those items recommended in EPA's guidance and specifies that sources subject to Stage II must post a copy of the registration form required by Part 201, "Permits and Certificates" at the gasoline dispensing site in a location accessible for inspection. In addition, New York requires any gasoline dispensing site to maintain records containing the gasoline throughput of the facility.

F. New York has also established an inspection function consistent with that described in EPA's guidance. Rule 230 was amended to require daily visual inspections of the Stage II components and to prohibit the use of dispensers with defective Stage II components.

G. EPA reviewed the submittal against the requirements of sections 182(b)(3) and 182(b)(2) of the Act, as interpreted in the General Preamble for Implementation of title I of the Clean Air Act Amendments of 1990 (57 FR 13498, 13513 (April 16, 1992)), and the two EPA documents entitled Technical Guidance-Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities and the Enforcement Guidance for Stage II Vehicle Refueling Control Programs. EPA has determined that Part 230 is consistent with EPA guidance and meets all Act

requirements for the regulated geographical area.

Conclusion

EPA has evaluated New York's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA has determined that the revisions made to Part 230 of title 6 of the New York Code of Rules and Regulations of the State of New York, entitled, "Gasoline Dispensing Sites and Transport Vehicles," effective September 22, 1994, meet the requirements of the Act. Therefore, EPA is approving those revisions.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective June 29, 1998 without further notice unless the Agency receives relevant adverse comments by June 1, 1998.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 29, 1998 and no further action will be taken on the proposed rule.

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

Administrative Requirements

Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

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 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 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).

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.

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.

Submission to Congress and the General Accounting Office

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. 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).

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 June 29, 1998. 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 section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: March 30, 1998.
William Muszynski,
Acting Regional Administrator, Region 2.

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 HH—New York

2. Section 52.1670 is amended by adding new paragraph (c)(92) to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *
 (92) Revisions to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds from Gasoline Dispensing Sites and Transport Vehicles, dated July 8, 1994, submitted by the New York State Department of Environmental Conservation (NYSDEC).

(i) Incorporation by reference:
 (A) Amendments to Part 230 of title 6 of the New York Code of Rules and Regulations of the State of New York, entitled "Gasoline Dispensing Sites and Transport Vehicles," effective September 22, 1994.

(ii) Additional material:
 (A) July 8, 1994, letter from Langdon Marsh, NYSDEC, to Jeanne Fox, EPA, requesting EPA approval of the amendments to Part 230.

3. In § 52.1679 the table is amended by revising the entry, for Part 230 to read as follows:

§ 52.1679 EPA-approved New York State regulations.

New York State regulation	State effective date	Latest EPA approval date	Comments
Part 230, Gasoline Dispensing Sites and Transport Vehicles	8/22/94	April 30, 1998.	

[FR Doc. 98-11381 Filed 4-29-98; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA058-4070; FRL-5997-8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Disapproval of the NO_x RACT Determination for Pennsylvania Power Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is disapproving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The intended effect of this action is to disapprove the nitrogen oxide (NO_x) reasonably available control technology (RACT) determination submitted by the Pennsylvania Department of

Environmental Protection (PADEP for Pennsylvania Power Company—New Castle plant (PPNC), located in Lawrence County, Pennsylvania.

DATES: This final rule is effective on June 1, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 566-2180, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On August 18, 1997 (62 FR 43959), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed disapproval of the NO_x RACT determination for Pennsylvania Power's New Castle plant (PPNC), located in Lawrence County.

The formal SIP revision was submitted by Pennsylvania Department of Environmental Resources (now the Pennsylvania Department of Environmental Protection or PADEP) on April 19, 1995. EPA is now taking final action to disapprove the RACT determination submitted by PADEP for PPNC. This action is being taken under section 110 of the Clean Air Act.

I. Background

On April 9, 1996 EPA originally published a direct final rulemaking approving this RACT determination. Opportunity for public comment was provided, however, and on May 8, 1996, the New York Department of Environmental Conservation (NYDEC) submitted a letter stating that it intended to adversely comment on EPA's proposed approval of PADEP's RACT determination for PPNC. Because of New York's letter of intent, the direct final action converted to a proposed action in accordance with established Federal rulemaking procedures. On June 11, 1996, EPA published a notice