

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[MI55-02-7263; FRL-6114-2]

**Approval and Promulgation of State Implementation Plan; Michigan; Site-Specific SIP Revision for Leon Plastics, Inc.****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** This rulemaking finalizes the Environmental Protection Agency's (EPA's) disapproval of the Michigan Department of Environmental Quality's site-specific State Implementation Plan (SIP) revision for Leon Plastics, Inc. A site-specific SIP revision request was made by the State of Michigan on behalf of Leon Plastics. This site-specific SIP would allow coating lines at the Leon Plastics facility in Grand Rapids, Michigan to demonstrate compliance with requirements based in the Clean Air Act through cross-line averaging over a 30-day period instead of on a line-by-line, daily basis. The EPA proposed to disapprove this request on February 3, 1998. During the comment period, comments were submitted and the EPA is responding to these comments.

**DATES:** This disapproval is effective July 24, 1998.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Douglas Aburano at (312) 353-6960 before visiting the Region 5 Office.)

**FOR FURTHER INFORMATION CONTACT:** Douglas Aburano, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353-6960.

**SUPPLEMENTARY INFORMATION:****I. Background**

On February 3, 1998, EPA proposed to disapprove the site-specific SIP revision for Leon Plastics, Inc. (63 FR 5489). This proposed disapproval was based on the fact that the submittal did not contain adequate justification for a greater than daily averaging and, thus, did not warrant approving a greater than daily averaging approach combined with cross-line averaging.

Following are the comments submitted during the public comment

period and EPA's response to those comments.

**II. Public Comments/Response to Comments**

*General Comment:* EPA has policy other than that cited which supports the requested SIP revision.

This general comment is broken down into the two comments that follow.

*Comment 1:* EPA Policy which authorizes the requested SIP revision.

The commentor states that, "EPA's January 20, 1984 policy memorandum entitled 'Averaging Times for Compliance with VOC Emission Limits' supports the SIP revision. This policy statement recognizes that application of RACT for each emission point taken individually may not be economically or technically feasible on a daily basis. One of the motivations for allowing more than daily averaging is 'variability or lack of predictability in a source's daily operation.'"

*Response to Comment 1:* The policy memorandum referred to by the commentor might be interpreted to allow greater than daily averaging due to "variability or lack of predictability in a source's operation," but a policy memorandum dated January 20, 1987 that modifies the 1984 memorandum states, "Long term averaging should never be employed to disguise the fact that a RACT emission limitation is being relaxed. Unless recordkeeping presents an insurmountable problem, adjustments should be made in the RACT number, not in the averaging time."

The January 20, 1987 memorandum was the basis for the proposed disapproval published in the **Federal Register** on February 3, 1998.

*Comment 2:* The EPA has granted monthly averaging to the very customers to whom Leon Plastics supplies flexible vinyl parts.

*Response to Comment 2:* EPA has not granted monthly averaging to the automotive industry. EPA believes that this comment refers the document entitled, "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-duty Truck Topcoat Operations" (EPA-450/3-88-018, December 1988). First, this protocol applies to a different source category than does Rule 632. Second, while this protocol allows recordkeeping of coating usage on a monthly basis, it requires the production usage records to be kept on a daily basis. This methodology will prorate the coating usage down to a daily basis to determine compliance with a daily limit. It does not allow an

extended averaging time as the commentor indicates.

*Comment 3:* EPA has breached its duty of good faith; detrimental reliance. Specifically, the commentor states that Leon Plastics was told that the air use permit terms and conditions were being discussed with EPA. The commentor goes further to indicate that EPA indicated that a cross-line average with extended averaging time would be approvable.

*Response to Comment 3:* The EPA had no discussions regarding this site-specific SIP revision request prior to its submittal in September 1996. EPA never indicated that a cross-line average with extended averaging time could be approvable for this source. If there had been prior discussions, EPA would have expressed a preference for a site-specific SIP revision request that would not have involved cross-line averaging or extended averaging but simply a request for a higher VOC limit for the line experiencing difficulty in complying with the applicable limit of 5.0 lb/gal. This type of request was mentioned in the February 3, 1998 proposed disapproval.

*Comment 4:* Alternatively, EPA should approve a site-specific SIP amendment for the coating. Leon Plastics requests, as an alternative to the pending SIP revision, a 6.3 pounds of VOCs per gallon of coating, as applied, minus water, limit for its flexible vinyl coatings.

*Response to Comment 4:* EPA mentioned this as a potential resolution to this situation in lieu of the site-specific SIP revision that is being disapproved. In the February 3, 1998 proposed disapproval, EPA stated that, "an alternative RACT for the Finish Room seems justified."

While an alternative RACT limit would be a variance from the 5.0 lb/gal limit found in Michigan's Rule 632, EPA would compare the subsequent SIP submittal material to information relating to EPA's suggested limit that applies to "soft coatings." This limit, as found in EPA's Alternative Control Techniques (ACT) document for "Surface Coating of Automotive/Transportation and Business Machine Plastic Parts" Table 4-1A, is 5.9 lb/gal. Judging from background materials included as part of the site-specific submittal that is being disapproved today, EPA is led to believe that the coating being used by Leon Plastics may be considered a "soft coating" which is a separate coating category unto itself in EPA's ACT, but a category not found in Michigan's Rule 632.

If the appropriate justification documenting the need for a higher VOC

limit as RACT was submitted as part of a site-specific SIP revision requesting a higher limit on the Finish Room line, EPA would approve such a request. However, this comment cannot be a substitute for a formal SIP revision request and the SIP revision request that has been made is not approvable.

**Comment 5:** The proposed disapproval categorically states that the vinyl coating operations performed by Leon Plastics Inc. are subject to Michigan's Rule 632 and to the 5.0 lbs. VOC per gallon limit on air dried interior coatings. Leon Plastics would note, however, that no Control Techniques Guidance (CTG) document supporting the 5.0 number was cited in the proposed disallowance. Leon Plastics is now seeking a clarification that Rule 632 does not apply to the coating of flexible vinyl automotive parts.

**Response to Comment 5:** Under Michigan's Rule 632, that has been approved into Michigan's federally enforceable SIP, the vinyl coating operations performed by Leon Plastics are considered under the general category of "Air-dried coating—interior parts" and are, therefore, subject to the 5.0 lb/gal limit.

A CTG was not cited as the basis for disapproval because CTGs and ACTs are only guidance documents used in the development of regulations. As discussed above, the basis for disapproval is that the revision proposing greater than daily averaging combined with cross-line averaging is not an acceptable alternative to the approved SIP.

EPA's ACT for Surface Coating of Automotive/Transportation and Business Machine Plastic Parts does have a limit for "soft coatings" of 5.9 lb/gal. This limit was not adopted by the State of Michigan. If it had been, it is possible that the coating used by Leon Plastics would be considered a "soft coating" and would then be subject to the 5.9 lb/gal limit rather than the 5.0 lb/gal limit.

**Comment 6:** No consideration was given to flexible vinyl parts in adopting Rule 632; therefore there is no technical basis for Rule 632 to apply. The proposed disapproval erroneously states that Rule 632 emission levels are based upon suggested VOC limits on EPA's control techniques document. However, Table 66 of Rule 632 was effective January 1, 1993 a full 13 months before the ACT was even issued.

**Response to Comment 6:** It is true there is no specific category referred to as "flexible vinyl parts" in Michigan's Rule 632. As previously mentioned, EPA's ACT for Surface Coating of

Automotive/Transportation and Business Machine Plastic Parts may address the coating of these parts under the category of "soft coatings" which has a higher VOC limit than the more general category of "Air-dried coating—interior parts" which appears in Michigan's Rule 632.

The proposed disapproval did not state that Michigan's rule was based on EPA's ACT. It stated that, "Rule 632 limits the VOC content of air dried interior automotive plastics coatings to 5.0 lbs of VOC per gallon of coating minus water. This limit reflects the suggested VOC content found in EPA's ACT for this category." The fact that Michigan's Rule 632 may have been adopted prior to EPA's issuance of an ACT for this category does not change EPA's rationale for approving Rule 632. The limits found in Rule 632 are considered comparable to (i.e., at least as stringent as) those found in EPA's ACT. Michigan's decision not to adopt the higher limit for "soft coatings" as described in EPA's ACT, does not make the rule disapprovable. Michigan's rule simply is more stringent because, under Rule 632, "soft coatings" are subject to the more general "Air-dried coating—interior parts" with a limit of 5.0 lb/gal rather than being subject to the 5.9 lb/gal limit.

**Comment 7:** It is believed the current Michigan rule and RACT standard do not address VOC content of air dried interior flexible vinyl coatings, but only coatings used for air dried interior rigid plastics.

**Response to Comment 7:** While EPA's ACT does not recognize "air dried interior flexible vinyl coatings" as a category, the coatings used at Leon Plastics may be considered "soft coatings" which are considered specialty coatings and have a higher VOC limit than do other "air dried interior automotive coatings." Michigan did not incorporate this higher limit into their Rule 632.

In any event, Leon Plastics may request a site-specific RACT limit for any coating line not meeting the general limit found in Michigan's rule. If there is adequate justification submitted with this request, a higher limit could be given to that coating line.

**Comment 8:** There is no definition of flexible vinyl as a plastic in Rule 632 or elsewhere. There is no definition of "plastic automotive parts." There apparently is no CTG on coating plastic automotive parts which would delineate whether or not EPA or MDEQ ever considered flexible vinyl substrates to be included or excluded from "plastic automotive parts." Therefore, Rule 632 should not be applied to the coating of

flexible vinyl interior automotive parts with air dried coatings.

**Response to Comment 8:** Rule 632 states that the emission limits shall apply to the "coating of plastic parts of automobiles and trucks." In Michigan Rule R 336.1103 Definitions; C, the coating of plastic parts of automobiles and trucks means the coating of any plastic part that is or shall be assembled with other parts to form an automobile or truck.

The general definition of plastic is any of various nonmetallic compounds, synthetically produced, usually from organic compounds by polymerization, of which vinyl is a subset. Rules usually do not contain definitions for words or phrases that are commonly used or have generally accepted standard definitions, such as plastic and vinyl.

Since vinyl is considered a plastic and these coated parts are assembled with other parts to form an automobile or truck, Rule 632 does apply to the process line in question.

While it is true there is no CTG on coating of plastic automotive parts, EPA's ACT, which has been mentioned previously, does contain a coating category within which flexible vinyl substrates may be included. This coating category is called "soft coating" and has a limit of 5.9 lb/gal. While this category is not included in Michigan's Rule 632, EPA would approve a properly promulgated and supported SIP revision to include it or a site-specific SIP revision for source that apply "soft coatings" at a 5.9 lb/gal limit. However, since Michigan's Rule 632 does not have this specific category, the coating operations at Leon Plastics fall under the more general category of "air-dried coating—interior parts" with the lower limit of 5.0 lb/gal.

### III. Final Rulemaking Action

To determine the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of section 110 and part D of the Act. In addition, EPA has reviewed the Michigan submittal in accordance with EPA policy guidance documents, including: EPA's policy memorandum dated January 20, 1987 from G. T. Helms, Chief of EPA's control Programs Operations Branch, entitled, "Determination of Economic Feasibility". Upon completing this review, the EPA is disapproving Michigan's SIP revision request because it is inconsistent with the Act and the applicable policy set forth in this document.

#### IV. Miscellaneous

##### A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

##### B. Executive Orders 12866 and 13045

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

The final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

##### C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) 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 this disapproval only affects one source, Leon Plastics, Inc. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities. Furthermore, as explained in this action, the request does not meet the requirements of the Clean Air Act and EPA cannot approve the request. EPA has no option but to disapprove the submittal.

EPA's disapproval of the State request under Section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this disapproval action does not have a significant impact on a substantial number of small entities.

##### D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, 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 this disapproval action 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 disapproval action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result.

##### E. Small Business Regulatory Enforcement Fairness Act

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. Section 804, however, exempts from section 891 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

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

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

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

Dated: June 12, 1998.

**David A. Ullrich,**

*Acting Regional Administrator.*

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[GA-035-2-9815a; FRL-6115-1]

##### Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions for a Transportation Control Measure

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Georgia State Implementation Plan (SIP) submitted by the State through the Department of Natural Resources (DNR) on August 29, 1997, requesting the incorporation of several transportation control measures (TCMs) into the SIP and the deletion of two TCMs from the existing SIP. This action only addresses the incorporation of one of the five TCMs submitted for approval into the SIP. Action was taken on the other TCMs in a separate rulemaking. The subject of this action is an alternative fuel refueling station/park and ride transportation center project located in Douglas County.

**DATES:** This final rule is effective August 10, 1998 unless adverse or critical comments are received by July 24, 1998. Should the Agency receive such comments, it will publish in the **Federal Register** a timely withdrawal of the direct final rule informing the public that this rule did not take effect.

**ADDRESSES:** Written comments on this action should be addressed to Kelly A. Sheckler at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. 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. Reference file GA35-9807. The Region 4 office may have additional background documents not available at the other locations.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Attn: Kelly Sheckler, 404/562-9042.

Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Division, 4244 International Parkway, Suite 136, Atlanta, Georgia 30354.

**FOR FURTHER INFORMATION CONTACT:** Kelly A. Sheckler at 404/562-9042.