



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2015-0523; FRL-9950-84-Region 5]**

**Air Plan Approval; Indiana; Shipbuilding Antifoulant Coatings**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving, as a revision to the Indiana State Implementation Plan (SIP), a submittal by the Indiana Department of Environmental Management (IDEM) dated July 17, 2015. The submittal contains a new volatile organic compound (VOC) limit for antifoulant coatings used in shipbuilding and ship repair facilities located in Clark, Floyd, Lake, and Porter counties. The submittal also includes a demonstration that this revision satisfies the anti-backsliding provisions of the Clean Air Act (CAA). The submittal additionally removes obsolete dates and clarifies a citation.

**DATES:** This direct final rule will be effective **[insert date 60 days after date of publication in the Federal Register]**, unless EPA receives adverse comments by **[insert date 30 days after date of publication in the Federal Register]**. 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:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2015-0523 at <http://www.regulations.gov> or via email to [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments,

please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4489, [svingen.eric@epa.gov](mailto:svingen.eric@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the Background of This SIP Revision?
- II. What is EPA's Analysis of the State's Submittal?
- III. What Action is EPA Taking?
- IV. Incorporation by Reference.
- V. Statutory and Executive Order Reviews.

**I. What is the Background of This SIP Revision?**

On July 17, 2015, IDEM submitted to EPA a request to incorporate into Indiana's SIP a revised version of 326 Indiana Administrative Code (IAC) 8-12-4, "Volatile organic compound emissions limiting requirements," with an effective date of June 21, 2015.

Indiana's rulemaking adds, at 326 IAC 8-12-4(a)(1)(D), a VOC limit of 3.33 lbs VOC per gallon for antifoulant coatings

used in shipbuilding and ship repair facilities located in Clark, Floyd, Lake, and Porter counties. In 326 IAC 8-12-3(22)(C), an "antifoulant specialty coating" is defined as any coating that is applied to the underwater portion of a vessel to prevent or reduce the attachment of biological organisms and that is registered with the EPA as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act. The same definition is provided in EPA's Control Techniques Guidelines (CTG) for Shipbuilding and Ship Repair Operations (Surface Coating) (61 FR 44050, August 27, 1996). Clark and Floyd counties are part of the Louisville, KY-IN maintenance area for the 1997 ozone National Ambient Air Quality Standard (NAAQS), and Lake and Porter counties are part of the Chicago-Naperville, IL-IN-WI nonattainment area for the 2008 ozone NAAQS and the Chicago-Gary-Lake County, IL-IN maintenance area for the 1997 ozone NAAQS.

Before IDEM added the revised VOC limit of 3.33 lbs VOC per gallon in 326 IAC 8-12-4(a)(1)(D), antifoulant coatings were limited by the specialty coating limit of 2.83 lbs VOC per gallon at 326 IAC 8-12-4(a)(1)(E), which IDEM has moved to 326 IAC 8-12-4(a)(1)(F) in this revision. The revised limit of 3.33 lbs VOC per gallon is consistent with the limit in Table 1-1 of

EPA's Alternative Control Techniques (ACT) Document: Surface Coating Operations at Shipbuilding and Ship Repair Facilities (EPA-453/R-94-032, April 1994). In addition, it is consistent with the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Shipbuilding and Ship Repair (Surface Coating) at 40 CFR part 63, subpart II. EPA's CTG identifies the limit from the ACT as Reasonably Available Control Technology (RACT), and states that the NESHAP can be used as a model rule for shipbuilding and ship repair facilities.

In Indiana's rulemaking, 326 IAC 8-12-4 is also revised to remove obsolete dates and clarify a reference to EPA's NESHAP for Shipbuilding and Ship Repair (Surface Coating) at 40 CFR 63, subpart II.

This SIP revision relies on offsets generated by the Architectural and Industrial Maintenance (AIM) coatings rule at 326 IAC 8-14 to compensate for the increase in allowable VOC emissions.

## **II. What is EPA's Analysis of the State's Submittal?**

Revisions to SIP-approved control measures must meet the requirements of, among other statutory provisions, section 110(1) of the CAA in order to be approved by EPA. Section 110(1), known as EPA's anti-backsliding provision, states:

"The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act."

In the absence of an attainment demonstration, to demonstrate no interference with any applicable NAAQS or requirement of the CAA under section 110(1), states may substitute equivalent emissions reductions to compensate for any change to a SIP-approved program, as long as actual emissions are not increased. "Equivalent" emissions reductions mean reductions which are equal to or greater than those reductions achieved by the control measure approved in the SIP. To show that compensating emissions reductions are equivalent, modeling or adequate justification must be provided. The compensating, equivalent reductions must represent actual, new emissions reductions achieved in a contemporaneous time frame to the change of the existing SIP control measure, in order to preserve the status quo level of emissions in the air. As described in EPA's memorandum "Improving Air Quality with Economic Incentive Programs" published in January 2001 (EPA-452/R-01-001), the equivalent emissions reductions must also be permanent,

enforceable, quantifiable, and surplus to be approved into the SIP.

Indiana's revisions to 326 IAC 8-12-4 increase the allowable VOC content of antifoulant coatings used in shipbuilding or ship repair facilities from 2.83 lbs VOC per gallon to 3.33 lbs VOC per gallon. VOCs contribute to the formation of ground-level ozone. Thus, the potential increase in VOC needs to be offset with equivalent (or greater) emissions reductions from another VOC control measure in order to demonstrate non-interference with the 1997 ozone NAAQS or 2008 ozone NAAQS. Indiana's SIP submittal includes a 110(1) demonstration that relies on equivalent emission reductions to compensate for allowable emission increases resulting from the new VOC limit for antifoulant coatings.

326 IAC 8-12-4(a)(1)(D) currently applies to only one source, Jeffboat LLC, which operates a stationary shipbuilding and repair facility at 1030 E Market St, Jeffersonville, Indiana, and is permitted under Title V Operating Permit T019-29304-0006. Jeffboat is located within Clark County and the Louisville, KY-IN maintenance area for the 1997 ozone NAAQS. IDEM's 110(1) demonstration consists of a calculation of the maximum possible increase in VOC emissions from this source

under the revised emission limit, followed by an identification of available offsets from the AIM rule at 326 IAC 8-14.

Indiana's submittal includes calculations illustrating the maximum possible increase in VOC emissions resulting from revisions to 326 IAC 8-12-4. Based on the maximum number of barges requiring antifoulant coatings, Jeffboat may use up to 2,580 gallons per year of coatings. At the original limit of 2.83 lbs VOC per gallon coating, the source may emit 3.65 tons VOC per year. In order to correctly determine the difference in resulting emissions, the original and revised limits must be compared on a solids basis; 2.83 lbs VOC per gallon coating equates to 4.6 lbs VOC per gallon solids, and 3.33 lbs VOC per gallon coating equates to 6.08 lbs VOC per gallon solids. From these figures, the revised limit is 32% higher than the original limit. A 32% increase from 3.65 tons VOC per year amounts to an increase in emissions of 1.17 tons VOC per year, or 0.004167 tons VOC per summer day. IDEM's section 110(1) demonstration states that offsets of this amount from Indiana's AIM coatings rule are needed to compensate for the increase in allowable emissions.

IDEM's calculations are more conservative than the approach recommended by EPA. Because Jeffboat operates six days per

week, or 312 days per year, 1.17 tons VOC per year amounts to 0.00375 tons VOC per summer day. However, in this rulemaking, IDEM has requested to offset the revised limit in 326 IAC 8-12-4 with credits from Indiana's AIM rule in the amount of 0.004167 tons VOC per summer day.

Indiana's AIM rule goes above and beyond the Federal AIM rule by adopting a rule that is similar to the Ozone Transport Commission (OTC) model rule "Architectural & Industrial Maintenance (AIM) Coatings" updated October 13, 2014. According to a 2006 Lake Michigan Air Directors Consortium (LADCO) white paper, the OTC model rule provides an up to 60.5% reduction in VOC emissions compared to uncontrolled 2002 base case emissions, while the Federal AIM rule alone only provides a 20% reduction compared to base case.

The Indiana AIM rule was approved into the SIP on August 30, 2012 (77 FR 52606). Indiana was not required to adopt an AIM coatings rule, but did so as a multi-state effort to help reduce ozone levels at the regional level. Indiana did not adopt the AIM rule to comply with any Indiana SIP planning requirements and has not taken credit for it in air quality plans, nor has it been included in maintenance year horizons or rate of further progress (RFP) inventories. Therefore, these

SIP approved AIM limits can be used as offsets for other purposes, such as this SIP revision.

Table 1 shows additional reductions available due to the OTC model rule and Indiana AIM rule. In the table, emission estimates are based on 2011 National Emission Inventory (NEI) data, which is the most recent NEI data currently available. Total reductions, as well as summer day calculations based on average daily emissions using a multiplier of 1.3, are based on the LADCO white paper. Indiana's 110(1) demonstration shows available offsets from the AIM rule of 0.292 tons VOC per summer day.

Table 1 - Clark and Floyd Counties Offset Analysis

County	Coating Category	Tons/Year	Ton/Summer Day	Total Reductions (AIM and OTC)	Federal AIM Reduction	Additional Reduction	Offset
Clark	Architectural	128.97	0.4594	0.388	0.2	0.24	0.108
Clark	Traffic Markings	0.14	0.0005	0.564	0.2	0.46	0.0002
Clark	Industrial Maintenance	33.24	0.1184	0.605	0.2	0.51	0.060
Clark	Special Purpose	3.53	0.0126	0.605	0.2	0.51	0.006
Floyd	Architectural	87.26	0.3108	0.388	0.2	0.24	0.073
Floyd	Traffic Markings	0.08	0.0003	0.564	0.2	0.46	0.000
Floyd	Industrial Maintenance	22.49	0.0801	0.605	0.2	0.51	0.041

Floyd	Special Purpose	2.39	0.0085	0.605	0.2	0.51	0.004
Total							0.292

IDEM's section 110(1) demonstration identifies available offsets from Indiana's AIM rule of 0.292 tons VOC per summer day, and Indiana's revisions to 326 IAC 8-12-4 require offsets of less than 0.004167 tons VOC per summer day. Therefore, the VOC emissions increase associated with the revisions of 326 IAC 8-12-4 are more than offset by the VOC emission reductions attributed to reductions in AIM coatings emissions.

In an earlier submittal, Indiana requested to use a separate portion of available offsets from Indiana's AIM rule to offset removal of Stage II gasoline vapor recovery requirements for the years 2014 and 2015. EPA finalized approval of that SIP submittal on June 9, 2016 (81 FR 37160). For the year 2014, EPA's final rulemaking relevant to the Stage II rule uses offsets from Indiana's AIM rule of 0.001829695 tons VOC per summer day, and for 2015, that same rulemaking uses offsets from Indiana's AIM rule of 0.002250149 tons VOC per summer day. That rulemaking relevant to Stage II uses no offsets for 2016 or future years.

Indiana's revised version of 326 IAC 8-12-4 has an effective date of June 21, 2015, so offsets are necessary for

2015 and future years. For 2015, IDEM identifies available offsets from Indiana's AIM rule of 0.292 tons VOC per summer day, EPA's proposed rulemaking relevant to Stage II uses offsets of 0.002250149 tons VOC per summer day, and this rulemaking relevant to 326 IAC 8-12-4 uses offsets of 0.004167 tons VOC per summer day. Therefore, offsets from Indiana's AIM rule of 0.285582851 tons VOC per summer day remain available for future use. For 2016 and future years, IDEM identifies available offsets from Indiana's AIM rule of 0.292 tons VOC per summer day, EPA's proposed rulemaking relevant to Stage II uses no offsets, and this rulemaking relevant to 326 IAC 8-12-4 uses offsets of 0.004167 tons VOC per summer day. Therefore, offsets from Indiana's AIM rule of 0.287833 tons VOC per summer day remain available for future use.

Based on the use of permanent, enforceable, contemporaneous, surplus emissions reductions achieved through the offsets from VOC reductions in AIM coatings emissions in Clark and Floyd counties, EPA has concluded that the revisions of 326 IAC 8-12-4 do not interfere with southeast Indiana's ability to demonstrate compliance with the 1997 ozone NAAQS or 2008 ozone NAAQS.

EPA also examined whether the revisions of 326 IAC 8-12-4

will interfere with attainment of any other air quality standards. Lake and Porter counties are designated attainment for all standards other than ozone, including sulfur dioxide and nitrogen dioxide. Clark and Floyd counties are designated attainment for all standards other than ozone and particulate matter<sup>1</sup>. For the reasons discussed above, EPA has no reason to believe that the revisions will cause the areas to become nonattainment for any of these pollutants. In addition, EPA believes that the revisions will not interfere with the areas' ability to meet any other CAA requirement.

Based on the above discussion and the state's section 110(1) demonstration, EPA has concluded that the revisions to 326 IAC 8-12-4 will not interfere with attainment or maintenance

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<sup>1</sup> Clark and Floyd counties are currently designated nonattainment for the 1997 Annual fine particulate matter (PM<sub>2.5</sub>) standard. While VOC is one of the precursors for particulate matter (NAAQS) formation, studies have indicated that in the southeast, which includes the Louisville, KY-IN maintenance area for the 1997 ozone NAAQS, emissions of direct PM<sub>2.5</sub> and the precursor sulfur oxides are more significant to ambient summertime PM<sub>2.5</sub> concentrations than emissions of nitrogen oxides and anthropogenic VOC. See, e.g., Journal of Environmental Engineering-Quantifying the sources of ozone, fine particulate matter, and regional haze in the Southeastern United States (June 24, 2009), available at: <http://www.journals.elsevier.com/journal-of-environmental-management>. Currently, Clark and Floyd counties are not designated nonattainment for any of the other criteria pollutants (i.e. sulfur dioxide, nitrogen dioxide, lead or carbon monoxide) and those pollutants are not affected by the removal of Stage II requirements.

in the Louisville, KY-IN maintenance area for the 1997 ozone NAAQS, the Chicago-Naperville, IL-IN-WI nonattainment area for the 2008 ozone NAAQS, or the Chicago-Gary-Lake County, IL-IN maintenance area for the 1997 ozone NAAQS, and would not interfere with any other applicable requirement of the CAA, and thus, are approvable under CAA section 110(1). Also, as stated in the previous section, the antifouling coating limit satisfies RACT.

### **III. What Action is EPA Taking?**

EPA finds that the revision will not interfere with any applicable CAA requirement. For that reason, EPA is approving, as a revision to the Indiana ozone SIP, a revised version of 326 IAC 8-12-4 submitted by IDEM on July 17, 2015.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective **[insert date 60 days after date of publication in the Federal Register]** without further notice unless we receive relevant adverse written comments by **[insert**

**date 30 days after date of publication in the Federal Register].**

If we receive such comments, we will withdraw this action 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. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective **[insert date 60 days after date of publication in the Federal Register].**

#### **IV. Incorporation by Reference.**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana Regulations described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA

into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>2</sup> EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders

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<sup>2</sup> 62 FR 27968 (May 22, 1997).

12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 action 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.

A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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: August 5, 2016.

Robert A. Kaplan,  
Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. In § 52.770 the table in paragraph (c) is amended by revising the entry for 8-12-4 under “Article 8. Volatile Organic Compound Rules” “Rule 12. Shipbuilding or Ship Repair Operations in Clark, Floyd, Lake, and Porter Counties” to read as follows:

**§ 52.770 Identification of plan.**

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(c) \* \* \*

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective Date	EPA approval date	Notes
* * * * *				
<b>Article 8. Volatile Organic Compound Rules</b>				
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<b>Rule 12. Shipbuilding or Ship Repair Operations in Clark, Floyd, Lake, and Porter Counties:</b>				
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8-12-4	Volatile organic compound emissions limiting requirements	06/21/2015	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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