



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

**[EPA-R05-OAR-2020-0030; EPA-R05-OAR-2020-0101; FRL-10011-74-
Region 5]**

**Air Plan Approval; Wisconsin; VOC RACT for the Wisconsin Portion
of the Chicago-Naperville, Illinois-Indiana-Wisconsin Area**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the volatile organic compounds (VOC) reasonably available control technology (RACT) State Implementation Plan (SIP) revision, submitted by the Wisconsin Department of Natural Resources (WDNR or Wisconsin) on January 21, 2020 and February 12, 2020. The Clean Air Act (CAA) requires states to implement RACT in ozone nonattainment areas classified as moderate (and higher). EPA finds Wisconsin's two VOC RACT SIP submissions to be approvable as meeting the moderate VOC RACT requirements of the CAA.

DATES: This final rule is effective **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Nos. EPA-R05-OAR-2020-0030 and EPA-R05-OAR-2020-0101. All documents in the docket are listed in the

<http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information 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 through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6680, leslie.michael@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID 19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. What is being addressed in this document?

This rule approves the January 21, 2020 and February 12, 2020 submissions from Wisconsin for the VOC RACT SIP revision. The background for this action is discussed in detail in EPA's proposal, dated April 17, 2020 (85 FR 21351). EPA is not taking

final action on any other elements included in our April 17, 2020 proposal (85 FR 21351).

II. What comments did we receive on the proposed rule?

EPA provided a 30-day review and comment period for the April 17, 2020, proposed rule. The comment period ended on May 18, 2020. We received adverse comments, which are summarized and addressed below.

Comment 1a: The commenter argues that RACT for Insinkerator cannot be implemented by way of administrative order and meet the VOC RACT requirements of the CAA. The commenter contends that EPA should not allow a state to use an administrative order to implement RACT requirements in place of duly enacted regulatory provisions under the state's rulemaking process. The commenter also alleges that the administrative order is problematic because it has a section that allows the state to unilaterally terminate the order at a point in the future.

Response 1a: Section 182(b)(2) of the CAA requires states to submit to EPA a SIP revision including "provisions to require the implementation of reasonably available control technology..." This can be accomplished in a variety of ways. Often, as noted by the commenter, states have adopted regulations through a state rulemaking process and submitted those regulations to EPA to be approved into the SIP. However, the state can choose to submit any permanent and enforceable limits for approval into

the SIP to satisfy the CAA's RACT requirement. Wisconsin has legal authority under ss. 285.11(6) and 285.13(2), Wis. Stats., to issue administrative orders that establish stationary source emission limitations for the purpose of demonstrating and maintaining attainment for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS or standard). Wisconsin submitted Administrative Order AM-20-01, which establishes source-specific limits at the Insinkerator facility that are equivalent to emission reductions achieved through the 2008 Miscellaneous Metal and Plastic Parts Coatings Control Techniques Guidelines (CTG). The effective date for Administrative Order AM-20-01 was January 9, 2020. As part of the SIP, the requirements of this Administrative Order may not be terminated until Wisconsin submits a SIP revision that demonstrates the requirements could be removed from the SIP in accordance with section 110(1) of the CAA.

Comment 1b: The commenter argues that the order has legal vulnerabilities which make it improper to approve into the SIP. Namely, the order prevents third party litigants from enforcing the requirements of the order. See the Waiver and Stipulation section of the order: "This stipulation and waiver does not affect the right of Insinkerator to assert any equitable or legal defense or to challenge the interpretation or application

of this Administrative Order in any challenge or alleging of violation brought by a party other than the department or EPA."

Response 1b: The language in the "Waiver and Stipulation" does not prevent third parties from taking legal action against Insinkerator. However, the source can defend itself against third party challenges to the administrative order.

Administrative Order AM-20-01 establishes, through permanent and enforceable emission limits and other requirements, a RACT equivalency demonstration for the Insinkerator facility. This language says that Insinkerator will comply with the order and not challenge issues brought about by EPA or WNDR. Nothing in the order precludes EPA or WNDR from enforcing the terms of the order. For these reasons, the order can be approved as RACT in the SIP.

Comment 1c: The commenter asserts that EPA is attempting to redesignate the area before all applicable RACT rules for the area are in place. EPA must follow the rules and wait to approve the Redesignation Request until Wisconsin promulgates a rule meeting the CTG and submits it to EPA for approval into the SIP.

Response 1c: The September 4, 1992, Calcagni memorandum (see "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) notes that

approval action on SIP elements and the redesignation request may occur simultaneously. EPA acknowledged in its proposed redesignation at 85 FR 21351 that approval of Wisconsin's VOC RACT submittal is a prerequisite for approval of the redesignation of the Kenosha portion of the Chicago area to attainment of the 2008 8-hour ozone standard. This simply requires that EPA approve Wisconsin's VOC RACT SIP at the same time or before finalizing approval of the redesignation. EPA is only approving Wisconsin's VOC RACT SIP in this action. EPA is not taking final action on any other elements included in our April 17, 2020 proposal (85 FR 21351). Therefore, this requirement for redesignation has been met.

III. What action is EPA taking?

EPA is approving the VOC RACT SIP revisions included in Wisconsin's January 21, 2020 and February 12, 2020 submittals. EPA finds Wisconsin's VOC RACT SIP submittals to be approvable as meeting the moderate VOC RACT requirements of section 182(b)(2) of the CAA.

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 Wisconsin Administrative Order described in the amendments to 40 CFR part 52 set forth below. EPA has made,

and will continue to make, these documents generally available through www.regulations.gov, and 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 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;

- 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, this 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. 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, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: August 19, 2020.

Cheryl Newton,
Deputy Regional Administrator, Region 5.

For the reasons stated in the preamble, the EPA amends title 40 CFR part 52 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. Section 52.2570 is amended by adding paragraph (c)(140) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(140) On February 12, 2020, The Wisconsin Department of Natural Resources submitted a request to incorporate Administrative Order AM-20-01 into the Wisconsin State Implementation Plan (SIP). This order establishes, through permanent and enforceable emission limits and other requirements, a Reasonably Available Control Technology (RACT) equivalency demonstration for the Insinkerator facility located in Kenosha, Wisconsin. The effective date for the Administrative Order is January 9, 2020.

(i) Incorporation by reference. Wisconsin Administrative Order AM-20-01, issued by the Wisconsin Department of Natural Resources on January 9, 2020, to Insinkerator for its facility located in Kenosha, Wisconsin.

(ii) [Reserved]

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[FR Doc. 2020-18627 Filed: 9/15/2020 8:45 am; Publication Date: 9/16/2020]