



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2013-0174: FRL – 9834-2]

**Approval and Promulgation of Implementation Plans; Washington:
Puget Sound Clean Air Agency Regulatory Updates**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve several revisions to Washington's State Implementation Plan (SIP) submitted by the Washington State Department of Ecology (Ecology) on February 4, 2005 and August 2, 2006. The submissions contain revisions to the Puget Sound Clean Air Agency (PSCAA or PS Clean Air) regulations approved by the PSCAA Board in 2003, 2004, and 2005.

DATES: Comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2013-0174, by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. Mail: Jeff Hunt, EPA, Office of Air, Waste, and Toxics, AWT-107, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101
- C. Email: R10-Public_Comments@epa.gov
- D. Hand Delivery: EPA, Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Jeff Hunt, Office of Air Waste, and

Toxics, AWT-107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R10-OAR-2013-0174. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information that is restricted by statute from disclosure. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through www.regulations.gov your email 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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 www.regulations.gov index. Although listed in the index, some information is not publicly available, *i.e.*, CBI

or other information that is restricted by statute from disclosure. 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 at www.regulations.gov or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, (206) 553-0256; or by email at hunt.jeff@epa.gov <mailto:body.steve@epa.gov>

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. This Action
- II. Why Are We Proposing To Approve These Revisions?
 - A. The EPA's Review of PSCAA Regulation I, Section 12.03
“Continuous Emission Monitoring System” adopted September 23, 2004.
 - B. The EPA's Review of PSCAA Regulation II, Section 1.05 “Special Definitions” and Regulation II, Section 3.04 “Motor Vehicle and Mobile Equipment Coating Operations” adopted July 24, 2003.
 - C. The EPA’s Review of PSCAA Regulation II, Section 3.11 “Coatings and Ink Manufacturing” repealed February 24, 2005.
- III. Summary of Action
- IV. Statutory and Executive Orders Review

I. This Action

Title I of the Clean Air Act (CAA), as amended by Congress in 1990, specifies the general requirements for states to submit SIPs to attain and maintain the National Ambient Air Quality Standards (NAAQS) and the EPA's actions regarding approval of those SIPs. As described in more detail in the following section, the EPA is proposing action on several revisions to the Washington SIP. We are proposing to approve and incorporate by reference into the SIP revisions to the PSCAA regulations found in Regulation I, Section 12.03 "Continuous Emission Monitoring Systems" adopted September 23, 2004; Regulation II, Section 1.05 "Special Definitions" adopted July 24, 2003; and Regulation II, Section 3.04 "Motor Vehicle and Mobile Equipment Coating Operations" adopted July 24, 2003. The EPA is also proposing to remove from the Washington SIP Regulation II, Section 3.11 "Coatings and Ink Manufacturing" repealed February 24, 2005. Lastly, the EPA is proposing to take no action on revisions to PSCAA Regulation I, Article 13 "Solid Fuel Burning Device Standards"; Regulation I, Section 3.11 "Civil Penalties"; Regulation I, Section 3.25 "Federal Regulation Reference Date"; and Regulation II, Section 2.07 "Gasoline Dispensing Facilities" contained in Ecology's February 4, 2005 and August 2, 2006 submissions because those regulations were subsequently revised by PSCAA.

II. Why Are We Proposing To Approve These Revisions?

We are proposing to approve the SIP revisions submitted by Ecology on February 4, 2005 and August 2, 2006, because they serve to clarify and strengthen the State's existing SIP and are consistent with the CAA requirements. A more detailed explanation of the basis for our proposed action is provided below and in the materials included in the docket.

A. The EPA's Review of PSCAA Regulation I, Section 12.03 "Continuous Emission Monitoring System" adopted September 23, 2004.

EPA last approved Regulation I, Section 12.03 "Continuous Emission Monitoring System" on August 31, 2004, based on the PSCAA regulations adopted April 9, 1998 (69 FR 53007). As part of the review for that action, the EPA raised two concerns regarding the version adopted in 1998. First, the EPA was concerned that exemption language contained in subsection 12.03(b)(1) referring to "demonstrates to the Control Officer" could be construed to limit the EPA's independent enforcement authority (69 FR 53008). At that time, the PSCAA satisfied the EPA's concern by submitting a letter clarifying that the control officer's determination is not binding on the EPA or citizens in an enforcement action. A footnote in the EPA's final approval states, "To avoid any ambiguity regarding the issue in the future, PS Clean Air has advised EPA that it will make clarifying changes to Subsection 12.03(b)(1) within the next six months to remove the language 'to the Control Officer.' The EPA supports this clarifying change." The EPA's second concern was related to subsection 12.03(b)(2) of the PSCAA regulations as they existed at that time. The EPA determined that exemption language contained in subsection 12.03(b)(2) "would authorize PS Clean Air to modify standards or requirements relied on to attain and maintain the NAAQS by granting an exemption or alternative to such requirements without going through a SIP revision and, as such, is not approvable" (69 FR 17370). In the EPA's final rulemaking, we specifically excluded subsection 12.03(b)(2) from the approved SIP.

The revised PSCAA regulations in Ecology's February 4, 2005 SIP submittal address both concerns. First, a revised version of Regulation I, Section 12.03

“Continuous Emission Monitoring System,” adopted September 23, 2004, follows up on PSCAA’s commitment to remove the ‘to the Control Officer’ language previously identified by the EPA as a concern in subsection 12.03(b)(1). Second, PSCAA eliminated subsection 12.03(b)(2) in response to the EPA’s concern that the previous exemption language lacked explicit standards. Based on our review of the changes, the EPA is now proposing to approve all of Regulation I, Section 12.03 as meeting the requirements of the CAA.

B. The EPA's Review of PSCAA Regulation II, Section 1.05 “Special Definitions” and Regulation II, Section 3.04 “Motor Vehicle and Mobile Equipment Coating Operations” adopted July 24, 2003.

Ecology’s February 4, 2005 submittal includes revisions to PSCAA Regulation II, Section 3.04 “Motor Vehicle and Mobile Equipment Coating Operations” adopted July 24, 2003. The submittal also includes changes to Regulation II, Section 1.05 “Special Definitions” corresponding to the changes in Section 3.04. EPA last approved Regulation II, Section 3.04 “Motor Vehicle and Equipment Coating Operations” on June 29, 1995, based on the PSCAA regulations adopted December 9, 1993 (60 FR 33734). PSCAA adopted these regulations to control volatile organic compound (VOC) emissions from original vehicle coating and vehicle refinishing. Following adoption of the PSCAA rules, the EPA issued a new federal rule to regulate automobile refinishing on September 11, 1998 (40 CFR Parts 9 and 59 - National VOC Emissions Standards for Auto Refinishing Coatings). Because the new federal automobile refinishing rule was more stringent than the existing PSCAA regulations, the PSCAA Board modified Section 3.04 to apply only to original equipment manufacturers, relying on the more stringent federal

standards for auto refinishing. Similarly, the PSCAA Board revised Section 1.05 “Special Definitions” to be consistent with Section 3.04, as well as other minor definition changes. More detailed analyses and strikeout versions of exact changes are included in Ecology’s February 4, 2005 submittal, contained in the docket for this action. In the regulation revision impact analysis, PSCAA estimated that relying on “(t)he EPA refinishing rule should reduce emissions from auto refinishing within the Agency's jurisdiction by about 113 tons VOC per year over the Agency's current rule. This is a 12% reduction in auto refinishing emissions.” The EPA reviewed these changes and is proposing to approve Regulation II, Sections 1.05 and 3.04 as meeting the requirements of the CAA.

C. The EPA’s Review of PSCAA Regulation II, Section 3.11 “Coatings and Ink Manufacturing” repealed February 24, 2005.

The EPA last approved PSCAA Regulation II, Section 3.11 “Coatings and Ink Manufacturing” on March 20, 1997, based on PSCAA regulations adopted April 11, 1996 (62 FR 13331). PSCAA originally adopted these regulations in 1991 to reduce VOC emissions from coating and ink manufactures. As a requirement of the 1990 CAA Amendments, the EPA published new Maximum Achievable Control Technology (MACT) standards for miscellaneous coating manufacturing that were much more stringent than the existing PSCAA regulations (National Emission Standards for Hazardous Air Pollutants (NESHAP): Miscellaneous Coating Manufacturing, December 11, 2003, 68 FR 69164, MACT Subpart HHHHH). In 2005, the PSCAA Board repealed Regulation II, Section 3.11, and is implementing and enforcing the more stringent MACT Subpart HHHHH NESHAP under a delegation agreement with the EPA. A copy of

PSCAA's NESHAP delegation agreement with EPA is included in the docket. The EPA and PSCAA have concurrent enforcement authority for MACT Subpart HHHHH. The EPA is therefore proposing to approve Ecology's August 2, 2006 request to remove Regulation II, Section 3.11 "Coatings and Ink Manufacturing" from the SIP.

III. Summary of Action

The EPA is proposing to approve, and incorporate by reference into the SIP, revisions to the PSCAA regulations found in Regulation I, Section 12.03 "Continuous Emission Monitoring Systems" adopted September 23, 2004; Regulation II, Section 1.05 "Special Definitions" adopted July 24, 2003; and Regulation II, Section 3.04 "Motor Vehicle and Mobile Equipment Coating Operations" adopted July 24, 2003, because they are consistent with CAA requirements. The EPA is proposing to remove from the Washington SIP Regulation II, Section 3.11 "Coatings and Ink Manufacturing," because these emission sources are covered by more stringent federal standards. Lastly, the EPA is proposing to take no action on revisions to PSCAA Regulation I, Article 13 "Solid Fuel Burning Device Standards"; Regulation I Section 3.11 "Civil Penalties"; Regulation I Section 3.25 "Federal Regulation Reference Date"; and Regulation II Section 2.07 "Gasoline Dispensing Facilities" contained in Ecology's February 4, 2005 and August 2, 2006 submittals because these regulations were subsequently revised by PSCAA.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 Clean Air Act; 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not impose substantial direct costs on tribal governments or preempt tribal law. The SIP is not approved to apply in Indian country located in the State, except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989*, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area and EPA is therefore approving this SIP on such lands. Consistent with EPA policy, the EPA nonetheless provided a consultation opportunity to the Puyallup Tribe in a letter dated June 6, 2013. The EPA did not receive a request for consultation.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Volatile organic compounds.

Dated: July 2, 2013.

Michelle L. Pirzadeh,
Acting Regional Administrator,
Region 10.

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