



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### [EPA-R01-OAR-2020-0029; FRL-10010-90-Region 1]

#### **Air Plan Approval; New Hampshire; Single Source Order for PSI Molded Plastics**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. The revision consists of a single source Order that New Hampshire issued to PSI Molded Plastics defining reasonably available control technology (RACT) requirements for the facility. This action is being taken under the Clean Air Act.

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

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2020-0029. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI 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 at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's

official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Bob McConnell, Environmental Engineer, Air and Radiation Division (Mail Code 05-2), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1046.

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

**Table of Contents**

- I. Background and Purpose
- II. Response to Comment
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

**I. Background and Purpose**

On February 14, 2020, EPA published a Notice of Proposed Rulemaking (NPRM) (see 85 FR 8520) with an associated Direct Final Rule (DFR) (see 85 FR 8408) for the State of New Hampshire. The DFR approved a single source RACT Order for PSI Molded Plastics in Wolfeboro, identified as RACT Order RO-0005. We received one, relevant adverse comment on that action, and so withdrew the DFR via a Withdrawal Notice published on April 10, 2020. See 85 FR 20165. Other specific requirements of the State’s submittals and the rationale for EPA’s proposed action are explained in the NPRM and will not be restated here. Our response to the adverse comment on the NPRM is summarized and responded to in section II below.

**II. Response to Comment**

We received one relevant, adverse comment on the NPRM. A summary of the comment, and our response, follows.

***Comment:*** *EPA must explain how this RACT bubble order complies with past EPA guidance. Particularly how allowing this bubble with a month long compliance time frame complies with guidance for VOCs that prescribes no longer than 24 hour averages. The attached guidance identifies four principles that must be honored and identifies a list of five items that, as the guidance specifically states, must be included in detail in the SIP submission. It does not appear EPA is following its own guidance in this case, please explain how the SIP submission identified, in detail, the list of five items to ensure compliance with this guidance.*

**Response:** First, we note that the commenter does not specify specific changes that should be made to the Order. The EPA guidance referenced by the commenter was issued on January 20, 1984, and is entitled, “Averaging Times for Compliance with VOC Emission Limits – SIP Revision Policy,” herein referred to as the January 1984 guidance. A copy of this guidance is included within the Docket for this action. EPA created the January 1984 guidance to assist states that had nonattainment areas for the 1979 one-hour ozone standard with the development of VOC control requirements to help meet that standard. We note that New Hampshire’s current obligation to implement RACT stems not from its status as a nonattainment area<sup>1</sup>, but rather from its inclusion within the Ozone Transport Region established by section 184 of the CAA. Although the January 1984 guidance was issued under a prior ozone standard, its general concepts are still applicable to the control of VOCs, and RACT Order RO-0005 issued by New Hampshire to PSI Molded Plastics adheres to the concepts espoused by that guidance. Put another way, EPA has determined that the SIP revision that we are approving with this final

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<sup>1</sup> EPA designated all portions of New Hampshire as attainment of the 2015 and 2008 ozone standards (see 82 FR 54232, and 77 FR 30088, respectively).

action comports with the guidance document cited by commenter.

The January 1984 guidance articulates a preference for short term, 24-hour or less averaging times for VOC regulations, but acknowledges the use of longer time frames may be appropriate if certain conditions are met such as a demonstration that the application of RACT on each emission point, line, machine, etc, is not economically or technically feasible. The facility submitted documentation, which is included within the Docket, to New Hampshire that traditional VOC control options, such as the installation of capture and control systems, was not economically feasible. Therefore, RACT Order RO-0005 allows the facility to use a bubbling methodology with monthly averaging times<sup>2</sup> and is consistent with the conditions outlined within EPA's January 1984 guidance for when longer term averaging times should be considered. The commenter points to "the list of five items to ensure compliance with the guidance."

Presumably, this is a reference to the five items listed on page 3 of the January 1984 guidance.

The Order for PSI Molded Plastics, which is included in the Docket for this action, is consistent with these 5 items in that it:

1. Contains VOC emission limits in an enforceable form (section D1 of the order contains limits in units of lbs. of VOC per gallon of coating, as applied, excluding water and exempt compounds) with an appropriate compliance date (the Order was effective upon its issuance on 11/20/2019);
2. Contains a description of affected processes (section C1 of the Order describes the affected metal and plastic parts coating process at the facility) and historical production and operating rates (contained within support material submitted with the Order, which have been added the Docket)

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<sup>2</sup> Although monthly averaging periods would for some months be 31 days, EPA finds this is a minor acceptable accommodation since the Order comports with our guidance.

3. Contains a description of control techniques (sections D1-5 of the Order describe the applicable emission limits and compliance calculation methodologies the source is to follow);

4. Contains a description of the nature of the control program (sections D1-5 provides that emissions be controlled by VOC content limits for coatings used by the facility), and;

5. Outlines recordkeeping and reporting requirements that will be used to demonstrate compliance (Part 6 of the Order contains recordkeeping and reporting requirements).<sup>3</sup> Therefore, as noted within our February 14, 2020 Direct Final Rule referenced above, we believe that New Hampshire's allowance for the facility to demonstrate compliance using a weighted averaging technique (bubble calculation) described within RACT Order RO-0005, on a monthly basis, is an acceptable, enforceable approach, and we are therefore approving the Order into the New Hampshire SIP. In conclusion, we note that the 1984 guidance referenced by the commenter references 4 principles from which the 5 criteria mentioned above are derived. Since the SIP submittal addresses all 5 items, it therefore meets the 4 principles and thus comports with the guidance.

### **III. Final Action**

We are approving a RACT Order RO-0005 for PSI Molded Plastics in Wolfeboro, into the New Hampshire SIP.

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

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of New Hampshire RACT Order RO-0005, dated November 20, 2019, described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make,

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<sup>3</sup> Item 5 also references a showing that the emission limits are consistent with the reasonable further progress plan and attainment demonstration, but as an attainment area, New Hampshire is not required to prepare those plans.

these materials generally available through <https://www.regulations.gov> (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). 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 in the next update to the SIP compilation.<sup>4</sup>

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

Under the Clean Air Act, 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 Clean Air Act. 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 regulatory action because this action is not significant 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.*);

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<sup>4</sup> 62 FR 27968 (May 22, 1997).

- 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, 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. Section 804, however, exempts from section 801 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). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

Under section 307(b)(1) of the Clean Air Act, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 10, 2020.

Dennis Deziel,  
Regional Administrator,  
EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations 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.

**Subpart EE – New Hampshire**

2. In § 52.1520, amend paragraph (d) by adding an entry in the table for “PSI Molded Plastics” at the end of the table, to read as follows:

**§ 52.1520 Identification of plan.**

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(d) \* \* \*

**EPA-Approved New Hampshire Source Specific Requirements**

Name of source	Permit No.	State effective date	EPA approval date <sup>2</sup>	Additional explanations/§52.1535 citation
**	*	*	*	**
PSI Molded Plastics	RO-0005	11/20/2019	[Insert date of publication in the <u>Federal Register</u> ]  [Insert <u>Federal Register</u> citation]	VOC RACT Order

<sup>2</sup> In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.