



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2020-0356; FRL-10012-14-Region 7]

**Air Plan Approval; Missouri; Removal of Control of Emissions
from Polyethylene Bag Sealing Operations**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a State Implementation Plan (SIP) revision submitted by the State of Missouri on January 15, 2019, and supplemented by letter on July 11, 2019. Missouri requests that the EPA remove a rule related to the control of emissions from polyethylene bag sealing operations in the St. Louis, Missouri area from its SIP. This removal does not have an adverse effect on air quality. The EPA's proposed approval of this rule revision is in accordance with the requirements of the Clean Air Act (CAA).

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

ADDRESSES: You may send comments, identified by Docket ID No. EPA-R07-OAR-2020-0356 to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Written Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Peter, Environmental Protection Agency, Region 7 Office, Air Permitting and Standards Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7397; email address: peter.david@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to the EPA.

Table of Contents

- I. Written Comments
- II. What is Being Addressed in this Document?
- III. Background
- IV. What is the EPA's Analysis of Missouri's SIP Revision Request?
- V. Have the Requirements for Approval of a SIP Revision Been Met?
- VI. What Action is the EPA Taking?
- VII. Incorporation by Reference
- VIII. Statutory and Executive Order Reviews

I. Written Comments

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2020-0356 at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from Regulations.gov. The 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. The 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. What is Being Addressed in this Document?

The EPA is proposing to approve the removal of 10 Code of State Regulations (CSR) 10-5.360, *Control of Emissions from Polyethylene Bag Sealing Operations*, from the Missouri SIP.

According to the July 11, 2019 letter from the Missouri Department of Natural Resources, available in the docket for

this proposed action, Missouri rescinded the rule because, of the only two facilities that were initially subject to the rule, neither facility is currently subject to the rule. One facility shutdown and the other facility no longer meets the applicability of the rule, specifically the facility no longer has a potential-to-emit (PTE) of volatile organic compounds (VOC) greater than 100 tons per year (tpy). Therefore, the rule is no longer necessary for attainment and maintenance of the 1979, 1997, 2008, or 2015 National Ambient Air Quality Standards (NAAQS) for Ozone.

III. Background

The EPA established a 1-hour ozone NAAQS in 1971. 36 FR 8186 (April 30, 1971). On March 3, 1978, the entire St. Louis Air Quality Control Region (AQCR) (070) was identified as being in nonattainment of the 1971 1-hour ozone NAAQS, as required by the CAA Amendments of 1977. 43 FR 8962 (March 3, 1978). On the Missouri side, the St. Louis nonattainment area included the city of St. Louis and Jefferson, St. Charles, Franklin and St. Louis Counties (hereinafter referred to in this document as the "St. Louis Area"). On February 8, 1979, the EPA revised the 1-hour ozone NAAQS, referred to as the 1979 ozone NAAQS. 44 FR 8202 (February 8, 1979). On May 26, 1988, the EPA notified Missouri that the SIP was substantially inadequate (hereinafter referred to as the "SIP Call") to attain the 1-hour ozone NAAQS

in the St. Louis Area. See 54 FR 43183 (October 23, 1989). To address the inadequacies identified in the SIP Call, Missouri submitted VOC control regulations on June 14, 1985; November 19, 1986; and March 30, 1989. The EPA subsequently approved the revised control regulations for the St. Louis Area on March 5, 1990. The VOC control regulations approved by EPA into the SIP included reasonably available control technology (RACT) rules as required by CAA section 172(b)(2), including 10 CSR 10-5.360 *Control of Emissions from Polyethylene Bag Sealing Operations*.

The EPA redesignated the St. Louis Area to attainment of the 1979 1-hour ozone standard on May 12, 2003. 68 FR 25418. Pursuant to section 175A of the CAA, the first 10-year maintenance period for the 1-hour ozone standard began on May 12, 2003, the effective date of the redesignation approval. On April 30, 2004, the EPA published a final rule in the *Federal Register* stating the 1-hour ozone NAAQS would no longer apply (i.e., would be revoked) for an area one year after the effective date of the area's designation for the 8-hour ozone NAAQS. 69 FR 23951 (April 30, 2004). The effective date of the revocation of the 1979 1-hour ozone standard for the St. Louis Area was June 15, 2005. See 70 FR 44470 (August 3, 2005).

As noted above, 10 CSR 10-5.360, *Control of Emissions from Polyethylene Bag Sealing Operations*, was approved into the

Missouri SIP as a RACT rule on March 5, 1990.¹ 55 FR 7712 (March 5, 1990). At the time the rule was approved into the SIP, 10 CSR 10-5.360 applied to all installations throughout St. Louis City and Jefferson, St. Charles, Franklin and St. Louis Counties that utilized polyethylene bag sealing operations.

By letter dated January 15, 2019, Missouri requested that the EPA remove 10 CSR 10-5.360 from the SIP. Section 110(l) of the CAA prohibits EPA from approving a SIP revision that interferes with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the CAA. The State supplemented its SIP revision with a July 11, 2019 letter in order to address the requirements of section 110(l) of the CAA.

IV. What is the EPA's Analysis of Missouri's SIP Revision Request?

In its July 11, 2019 letter, Missouri states that it intended its RACT rules, such as 10 CSR 10-5.360, to solely apply to existing sources in accordance with section 172(c)(1) of the CAA.² Missouri states that although the applicability section of 10 CSR 10-5.360 specifies that the rule applies to all installations located throughout St. Louis City and

¹ 10 CSR 10-5.360 was initially approved into Missouri's SIP on October 15, 1984 (49 FR 40164) but was ultimately revised as part of the updated control strategy and this revision was approved on March 5, 1990.

² The EPA agrees with Missouri's interpretation of CAA section 172(c)(1) in regard to whether RACT is required for existing sources, but also notes that the State regulation establishing RACT may apply to new sources as well, dependent upon the State regulation's language.

Jefferson, St. Charles, Franklin and St. Louis Counties, the only two facilities that met the applicability criteria of the rule were Bemis Bag Company and Crown Zellerbach (Gaylord Container) which is currently being operated as International Paper St. Louis (hereinafter referred to as "Bemis" and "International Paper", respectively).

Missouri, in its July 11, 2019 letter, indicated that Bemis is no longer in operation. The EPA confirmed that Bemis is no longer in operation³ and is therefore no longer subject to 10 CSR 10-5.360. Missouri further indicated in the July 11, 2019 letter that International Paper was not operating under a Part 70/Title V Operating Permit.⁴ Facilities with a PTE greater than or equal to 100 tpy are required to obtain a Part 70/Title V Operating Permit.⁵ To be subject to 10 CSR 10-5.360, the facility must also have a PTE greater than or equal 100 tpy. Since the PTE from International Paper does not exceed 100 tpy, the facility is no longer subject to 10 CSR 10-5.360.⁶

As stated above, Missouri contends that 10 CSR 10-5.360 may

³ The EPA reviewed MDNR's website that lists active, issued permits to facilities in Missouri and did not observe a permit for Bemis. Further, the EPA reviewed EPA's ICIS-Air database which indicated that the facility was no longer in operation.

⁴ Missouri confirmed the operating permit status in an email from Shelly Reimer of MDNR to David Peter of EPA Region 7 dated June 12, 2020, which is included in the rulemaking docket. Missouri further indicated in this email that the highest annual emissions from the facility from 2003 to 2019 was approximately 3 tons. The EPA reviewed MDNR's website that lists active, issued permits and did not observe a permit for the International Paper.

⁵ 10 CSR 10-6.065(2)(R).

⁶ In Missouri's June 12, 2020 email, Missouri further indicated that the construction permits issued to the facility showed no indication of polyethylene bag sealing operations. International Paper would be required to obtain the appropriate construction permits before starting up any new polyethylene bag sealing operations.

be removed from the SIP because section 172(c)(1) of the CAA requires RACT for existing sources, and because 10 CSR 10-5.360 was applicable to only two sources⁷ that are no longer subject to the rule and, therefore, the rule no longer reduces VOC emissions. Because these two facilities are no longer subject to the rule, the EPA believes the rule no longer provides an emission reduction benefit to the St. Louis Area and is proposing to remove it from the SIP.

Missouri's July 11, 2019 letter states that any new sources or major modifications of existing sources are subject to new source review (NSR) permitting. Under NSR, a new major source or major modification of an existing source with a PTE of 250 tpy⁸ or more of any NAAQS pollutant is required to obtain a Prevention of Significant Deterioration (PSD) permit when the area is in attainment or unclassifiable, which requires an analysis of Best Available Control Technology (BACT) in addition to an air quality analysis and an additional impacts analysis. Sources with a PTE greater than 100 tpy, but less than 250 tpy,⁹ are required to obtain a minor permit in accordance with Missouri's New Source Review permitting program, which is

⁷ The EPA indicated in the February 3, 1983 *Federal Register* document (48 FR 5022), which proposed to approve 10 CSR 10-5.360 into Missouri's SIP, that two facilities were subject to this rule but did not specifically name the two facilities.

⁸ The PSD major source threshold for certain sources is 100 tpy rather than 250 tpy (see 40 CFR 52.21(b)(1)(i)(a) and 10 C.S.R. 10-6.060(8)(A)).

⁹ Except for those sources with a PSD major source threshold of 100 tpy.

approved into the SIP.¹⁰ Further, a new major source or major modification of an existing source with a PTE of 100 tpy or more of any NAAQS pollutant is required to obtain a nonattainment (NA) NSR permit when the area is in nonattainment, which requires an analysis of Lowest Achievable Emission Rate (LAER) in addition to an air quality analysis, an additional impacts analysis and emission offsets. The EPA agrees with this analysis.

Missouri has demonstrated that removal of 10 CSR 10-5.360 will not interfere with attainment of the NAAQS, RFP¹¹ or any other applicable requirement of the CAA because the two sources ever subject to the rule are no longer subject and the removal of the rule will not cause VOC emissions to increase. Therefore, the EPA proposes to approve the removal of 10 CSR 10-5.360 from the SIP.

V. Have the Requirements for Approval of a SIP Revision Been Met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR

¹⁰ EPA's latest approval of Missouri's NSR permitting program rule was published in the *Federal Register* on October 11, 2016. 81 FR 70025.

¹¹ RFP is not applicable to the St. Louis Area because for marginal ozone nonattainment areas, such as the St. Louis Area, the specific requirements of section 182(a) apply in lieu of the attainment planning requirements that would otherwise apply under section 172(c), including the attainment demonstration and reasonably available control measures (RACM) under section 172(c)(1), reasonable further progress (RFP) under section 172(c)(2), and contingency measures under section 172(c)(9).

part 51, appendix V. The State provided public notice on this SIP revision from May 15, 2018, to August 2, 2018, and received eleven comments from the EPA that related to Missouri's lack of an adequate demonstration that the rule could be removed from the SIP in accordance with section 110(1) of the CAA, whether the rule applied to new sources and other implications related to rescinding the rule. Missouri's July 11, 2019 letter and December 3, 2018 response to comments on the state rescission rulemaking addressed the EPA's comments. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

VI. What Action is the EPA Taking?

The EPA is proposing to approve Missouri's request to rescind 10 CSR 10-5.360 from the SIP because the rule applied to two facilities that are no longer subject and because the rule is not applicable to any other source. Therefore, the rule no longer serves to reduce emissions in the St. Louis Area. Furthermore, any new sources or major modifications of existing sources in the St. Louis Area are subject to NSR permitting.¹² We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

¹² "NSR Permitting" includes PSD permitting in areas designated attainment and unclassifiable, NA NSR in areas designated nonattainment and minor source permitting.

VII. Incorporation by Reference

In this document, the EPA is proposing to amend regulatory text that includes incorporation by reference. As described in the proposed amendments to 40 CFR part 52 set forth below, the EPA is proposing to remove provisions of the EPA-Approved Missouri Regulation from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VIII. 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 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 SIP approvals are exempted 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 the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; 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).

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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 13, 2020.

James Gulliford,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

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-AA Missouri

§52.1320 [Amended]

2. In §52.1320, the table in paragraph (c) is amended by removing the entry "10-5.360" under the heading "Chapter 5-Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area".

[FR Doc. 2020-15500 Filed: 7/28/2020 8:45 am; Publication Date: 7/29/2020]