



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2020-0092; FRL-10021-19-Region 4]

Air Plan Approval; KY; Jefferson County

Existing and New VOC Storage Vessels Rule Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), on September 5, 2019. The revisions were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District or APCD) and make changes to the regulations for existing and new storage vessels for volatile organic compounds (VOCs). EPA is approving the revisions that regulate existing and new storage vessels for VOCs because the changes are consistent with the Clean Air Act (CAA or Act).

DATES: This 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 Identification No. EPA-R04-OAR-2020-0092. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information may not be publicly available, i.e., 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 can either be retrieved electronically via www.regulations.gov or in hard copy at the at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division,

U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person 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 Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8994. Ms. LaRocca can also be reached via electronic mail at larocca.sarah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is approving changes to Regulation 6.13, *Standards of Performance for Existing Storage Vessels for Volatile Organic Compounds*, and Regulation 7.12, *Standards of Performance for New Storage Vessels for Volatile Organic Compounds*, of the Louisville Metro Air Pollution Control District portion of the Kentucky SIP, submitted by the Commonwealth on September 5, 2019. These modifications update the current SIP-approved version of Regulation 6.13 (Version 7) and Regulation 7.12 (Version 7) to Version 8 of each.

II. EPA's Analysis of the Revisions

In its September 5, 2019, submittals, the District includes a modification that changes the true vapor pressure criteria in subsection 5.1 of Regulations 6.13 and 7.12 from 1.0 pounds per square inch absolute (psia) to 1.5 psia to better align with the general applicability provision in Section 1 of those regulations. Subsection 5.1 is a monitoring requirement which applies only to storage vessels that: (1) have an external floating roof, (2) have a capacity of greater than 40,000 gallons, and (3) are not equipped with a secondary seal or approved alternative control technology. EPA notes that this change to the monitoring requirement does not alter the number

of tanks subject to emission controls. EPA also notes that subsection 5.1 does not apply to any storage vessels that are newly constructed or modified after July 23, 1984, because such vessels would be subject to EPA's New Source Performance Standards (NSPS) subpart Kb, which requires that a secondary seal be installed on all vessels with a design capacity greater than or equal to 40,000 gallons and that store volatile organic liquids with a maximum true vapor pressure equal to or greater than 0.75 psia. *See* 40 CFR 60.112b(a)(2). Furthermore, the District states that the monitoring requirement in subsection 5.1 does not currently apply to any facilities under their jurisdiction.¹ For these reasons, EPA has determined, in accordance with CAA section 110(l), these changes will not interfere with attainment or maintenance of any national ambient air quality standards (NAAQS), reasonable further progress toward attainment of a NAAQS, or any other applicable requirement of the CAA.

The September 5, 2019, SIP revisions also contain the following changes: necessary renumbering of Regulation 6.13, Section 2; revising units of pressure measurement from millimeters of mercury (mm Hg) to the International System of Units standard kilopascal (kPa) in Regulations 6.13 and 7.12, Sections 1 and 3; correcting 11.1 psia to 11.0 psia as this is equivalent to the pressure of 570 mm Hg in Regulations 6.13 and 7.12, Section 3; changing 10.3 kPa to 10.4 kPa for consistency within Section 3 of Regulation 7.12, Section 3.4.3; clarifying that subsection 3.3 applies only to vessels with a storage capacity of less than 40,000 gallons in Regulations 6.13 and 7.12, Section 3;² changing the word "section" to "subsection" in Regulation 6.13, Section 3; and replacing the term "VOCs" with the phrase "volatile organic compounds" in Regulation 7.12, Sections 2 and 3. EPA has determined that these changes will not interfere with attainment or maintenance of any NAAQS, reasonable further progress, or any

¹ Kentucky SIP submittal, September 5, 2019, Louisville Metro Air Pollution Control District Regulatory Impact Assessment, p. 2.

² Although storage vessels with a capacity greater than 40,000 gallons and vapor pressure equal to or greater than 1.5 psia but not greater than 11.0 psia would no longer be required to install a permanent submerged fill pipe, these sources would still be required to install a floating roof and a vapor recovery system, or their equivalent, in accordance with subsection 3.1. The technology requirements in subsection 3.1 are more effective control technologies than a permanent submerged fill pipe.

other applicable requirement of the CAA because they are minor in nature and do not change the number of tanks that are subject to emission controls under these regulations.

In a notice of proposed rulemaking (NPRM) published on September 21, 2020 (85 FR 59256), EPA proposed to approve the changes described above to the Jefferson County portion of the Kentucky SIP provided on September 5, 2019. The September 21, 2020, NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the September 21, 2020, NPRM were due on or before October 21, 2020. Comments were received on the September 21, 2020, NPRM and are addressed below.

III. Response to Comments

EPA received three comments on its September 21, 2020, NPRM, one in favor and two in opposition. These comments are provided in the docket for this final action. EPA has summarized and responded to the adverse comments below.

Comment 1: The Commenter contends that EPA must quantify the potential emissions increase of raising the cutoff threshold from 1.0 psia (7.0 kPa) to 1.5 psia (10.4 kPa) because “simply reasoning that ‘a very small portion of hundreds of facilities [are applicable]’ is not a valid reason for determining compliance with CAA section 110(l).”

Response 1: EPA disagrees with the Commenter and notes that the comment improperly implies that the section 110(l) analysis was based solely on the District's statement regarding the facilities that subsection 5.1 could theoretically apply to. As discussed above and in the NRPM, the removal of the monitoring requirement in subsection 5.1 for vessels storing VOCs of less than 1.5 psia will have no impact on emissions. Subsection 5.1 is a monitoring requirement which applies to certain types of storage vessels. The District changed the true vapor pressure criteria of this monitoring requirement from 1.0 psia to 1.5 psia to better align with the 1.5 psia threshold in the existing general applicability provision (Section 1) and the VOC emission limitations (Section 3). The emission control standards for VOC compounds are contained in Section 3 of rules 6.13 and 7.12, and none of them apply to tanks storing VOCs with a true vapor

pressure of less than 1.5 psia. In addition, as noted above, subsection 5.1 does not apply to any existing facilities and also would not apply to any future storage vessels having a design capacity equal to or greater 40,000 gallons and storing liquids with a true vapor pressure equal to or greater than 0.75 psia because NSPS subpart Kb requires that a secondary seal be installed on all such vessels that are newly constructed or modified.

Comment 2: The Commenter states that “EPA should disapprove this SIP because VOCs from existing stationary tanks are emitting harmful pollutants into the air we breathe.” The Commenter further states that EPA “could also . . . not approve this SIP because there are currently no viable ways to remove this pollution from existing stationary tank wells” and that “these pollutants are believed to continue entering and migrating underground from the existing wells and into water bodies.”

Response 2: EPA disagrees with the Commenter. A SIP is a federally enforceable plan for each state that identifies how that state will attain and maintain the NAAQS. In formulating its SIP, each state is given wide discretion so long as it is consistent with all applicable requirements of the CAA, including section 110(l), and EPA must approve SIP revisions that meet these requirements. *See* CAA sections 110(a), (k). EPA initially incorporated Regulations 6.13 and 7.12 into the SIP in 1980 and 1982, respectively, as part of the District’s measures to attain and maintain the NAAQS. *See* 45 FR 6092 and 47 FR 25010. The SIP revisions at issue modify those regulations in the manner described above and in the NPRM, and EPA has determined that these revisions meet all applicable requirements of the CAA. Therefore, EPA must approve the revisions.

Regarding the comment about existing stationary tank wells, it is unclear what the Commenter is referring to. Regulations 6.13 and 7.12 contain measures to control air pollution from storage vessels of VOCs and do not mention “wells.” To the extent that the Commenter is concerned with potential non-air related environmental impacts, those impacts are beyond the scope of this action on Kentucky’s September 5, 2019, SIP revisions.

IV. Incorporation by Reference

In this document, 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 APCD Regulation 6.13, *Standards of Performance for Existing Storage Vessels for Volatile Organic Compounds*, Version 8, and Regulation 7.12, *Standards of Performance for New Storage Vessels for Volatile Organic Compounds*, Version 8, effective June 19, 2019, which make minor amendments to units of measurement and the applicability of standards for both existing and new storage vessels for VOCs, and which make minor editorial changes for internal consistency. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (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 SIP, have been incorporated by reference by EPA into the 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.³

V. Final Action

EPA is approving the changes to Regulation 6.13, *Standards of Performance for Existing Storage Vessels for Volatile Organic Compounds*, and Regulation 7.12, *Standards of Performance for New Storage Vessels for Volatile Organic Compounds*, of the Jefferson County portion of the Kentucky SIP, submitted by the Commonwealth on September 5, 2019. The September 5, 2019, SIP revisions update the current SIP-approved version of Regulation 6.13 (Version 7) and Regulation 7.12 (Version 7) to Version 8 for each. EPA is approving these changes for the reasons discussed above.

VI. Statutory and Executive Order Reviews

³ See 62 FR 27968 (May 22, 1997).

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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. 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);
- 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).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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, Ozone, Volatile organic compounds.

Dated: March 4, 2021.

John Blevins,

Acting Regional Administrator,

Region 4.

For the reasons stated in the preamble, the EPA amends 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.*

Subpart S – Kentucky

2. In § 52.920(c), Table 2 is amended under “Reg 6 – Standards of Performance for Existing Affected Facilities” by revising the entry for “6.13” and under “Reg 7 – Standards of Performance for New Affected Facilities” by revising the entry for “7.12” to read as follows:

§ 52.920 Identification of plan.

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(c) * * *

TABLE 2 – EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date	Explanation
**	*	*	*	*	*
Reg 6–Standards of Performance for Existing Affected Facilities					
**	*	*	*	*	*
6.13	Standard of Performance for Existing Storage Vessels for Volatile Organic Compounds	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]	6/19/2019	
**	*	*	*	*	*
Reg 7–Standards of Performance for New Affected Facilities					
**	*	*	*	*	*
7.12	Standard of Performance for New Storage Vessels of Volatile Organic Compounds	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]	6/19/2019	
**	*	*	*	*	*

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[FR Doc. 2021-04967 Filed: 3/9/2021 8:45 am; Publication Date: 3/10/2021]