

a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new requirements.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that

may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to approve or disapprove this revision to the West Virginia SIP for minor sources will be based on whether it meets the requirements of section 110(a)(2)(A)-K) and of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 22, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI55-01-7263; FRL-5958-6]

Approval and Promulgation of State Implementation Plan; Michigan; Site-Specific SIP Revision for Leon Plastics, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On September 24, 1996, the Michigan Department of Environmental Quality submitted a revision to the State's Ozone State Implementation Plan. This submittal requested federal approval of an alternative to the State's federally approved R 336.632 Emission of volatile organic compounds from existing automobile, truck, and business machine plastic part coating lines or "Rule 632." The Environmental Protection Agency (EPA) is proposing to disapprove this alternative to the generally applicable Rule 632 because it is not consistent with the Clean Air Act and applicable EPA policy.

DATES: Comments on this proposed rule must be received on or before March 5, 1998.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision and EPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Douglas Aburano at (312) 353-6960 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353-6960.

SUPPLEMENTARY INFORMATION:

I. State Submittal

On September 7, 1994, EPA federally approved Michigan's R 336.632 Emission of volatile organic compounds from existing automobile, truck, and business machine plastic part coating lines or "Rule 632." Michigan had adopted this rule to fulfill the State's requirement for volatile organic compound (VOC) Reasonably Available Control Technology (RACT) for the purposes of attaining and maintaining the national ambient air quality standard for ozone.

Rule 632 limits the VOC content of air dried interior automotive plastics coatings to 5.0 lbs of VOC per gallon of coating, minus water. This limit reflects the suggested VOC content limit found in EPA's Alternative Control Techniques (ACT) document for this source category ("Surface Coating of Automotive/Transportation and Business Machine Plastic Parts").

The vinyl coating operations performed by Leon Plastics, Inc. are subject to Michigan's Rule 632 and to the 5.0 VOC lb per gallon limit.

On September 24, 1996, the Michigan Department of Environmental Quality (MDEQ) submitted to EPA a revision to the State's Ozone State Implementation Plan. This submittal requested federal approval of an alternative to the State's Rule 632 that applies to Leon Plastics.

Leon Plastics has been issued a permit (Permit to Install 94-87B) by the State of Michigan that allows this facility to comply with the applicable limit by allowing both cross-line average of two coating lines, based on a 30 day average. Before this compliance methodology can become federally enforceable, the

EPA must review it and approve it into the Michigan State Implementation Plan (SIP). Until such an approval is published in the **Federal Register**, the general provisions of Rule 632 (including the 5.0 lb/gallon limit on a line-by-line basis) are applicable to the processes at Leon Plastics on the Federal level.

The State of Michigan, on behalf of Leon Plastics, Inc., has submitted to EPA a site-specific SIP revision requesting that the State's permit now be approved into the Michigan SIP.

II. Review of State Submittal

While the submittal made by MDEQ does contain enough background information that would seem to justify a site-specific alternative RACT, the request for allowing this facility to comply with the applicable limit by allowing both cross-line average of two coating lines, based on a 30 day average is not acceptable.

The submittal contains information that indicates that the limit that applies to the Finish Room operations may be inappropriate because special consideration was not given for flexible interior vinyl parts in EPA's ACT or in Michigan Rule 632. In EPA's ACT and under Rule 632 these products fall into the more generic category of "air dried interior automotive plastics coatings."

An analysis of add-on controls was also included and this analysis showed the cost of these controls to be unreasonable on a dollars per ton of VOC removed basis.

Because the VOC content limit found in the federally enforceable rule may be inappropriate and because add-on controls may be unreasonable, an alternative RACT for the Finish Room seems justified. However, the request for both a cross-line average and an extended averaging time is not approvable.

The cross-line average may be acceptable under these conditions, but the extended averaging time is not warranted with or without the cross-line average. It is EPA's policy to allow greater than daily averaging times only when recordkeeping cannot be performed on a daily basis (see memo dated January 20, 1987 "Determination of Economic Feasibility" from G.T. Helms, Chief of EPA's Control Programs Operations Branch). Unless recordkeeping presents an insurmountable problem, adjustments should be made in the RACT number, not in the averaging time. Since this is

not the case for Leon Plastics and records can be kept to demonstrate compliance, or noncompliance, with the VOC content limit, this submittal cannot be approved. Furthermore, pursuant to the Seventh Circuit's decision in *Bethlehem Steel Corp. v. Gorsuch*, 742 F.2d 1028 (7th Cir. 1984), EPA is prohibited from disapproving, in part approving, in part any submission if the result would be to create a law that the State legislature would not have enacted. Therefore, because the extended average time is not approvable and cannot be separated from the cross-line averaging, EPA is proposing to disapprove the entire submission.

III. Proposed Rulemaking Action

To determine the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of section 110 and part D of the Act. In addition, EPA has reviewed the Michigan submittal in accordance with EPA policy guidance documents, including: EPA's policy memorandum dated January 20, 1987 from G.T. Helms, Chief of EPA's control Programs Operations Branch, entitled, "Determination of Economic Feasibility". Upon completing this review the EPA is proposing to disapprove Michigan's SIP revision request because it is inconsistent with the Act and the applicable policy set forth in this document.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

EPA's disapproval of the State's request under Section 110 and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval.

Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: January 23, 1998.

Michelle D. Jordan,

Acting Regional Administrator.

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