ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0010; MT–001–0028; FR–174–9]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Billings/Laurel Sulfur Dioxide State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and limitedly approve and limitedly disapprove revisions to the Billings/Laurel sulfur dioxide (SO2) State Implementation Plan (SIP) submitted by the State of Montana on July 29, 1998 and May 4, 2000. The May 4, 2000 SIP revision was submitted to satisfy earlier commitments made by the Governor. The intended effect of this action is to make federally enforceable those provisions that EPA is proposing to partially and limitedly approve and to limitedly approve and to limitedly disapprove those provisions that are not approvable. EPA is taking this action under sections 110 and 179 of the Clean Air Act (Act). In a separate action being published today, we are finalizing action on other provisions of the Billings/Laurel SO2 SIP.

DATES: Written comments must be received on or before July 1, 2002.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

Docket: You can inspect the docket concerning this action, docket #R8–99–01, at the Air Program Office, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202. Call Laurie Ostrand to make an appointment at (303) 312–6437.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region 8, (303) 312–6437.

SUPPLEMENTARY INFORMATION:

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *CEMS* mean or refer to continuous emission monitoring systems.

(iii) The initials *CO* mean or refer to carbon monoxide.

(iv) the words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(v) The initials *FCC* mean or refer to fluid catalytic cracking unit.

(vi) The initials *FIP* mean or refer to Federal Implementation Plan.

(vii) The initials *H2S* mean or refer to hydrogen sulfide.

(viii) The initials *MBER* mean or refer to the Montana Board of Environmental Review.

(ix) The initials *MDEQ* mean or refer to the Montana Department of Environmental Quality.

(x) The initials *NAAQS* mean or refer to the national ambient air quality standards.

(xi) The initials NO_X mean or refer to nitrogen oxides.

(xii) The initials *SIP* mean or refer to State Implementation Plan.

(xiii) The initials *SO2* mean or refer to sulfur dioxide.

(xiv) The words *State* and *Montana* mean the State of Montana, unless the context indicates otherwise.

(xv) The initials *SWS* mean or refer to sour water stripper.

(xvi) The initials *TSD* mean or refer to the Technical Support Document.

(xvii) The initials *YELP* mean or refer to the Yellowstone Energy Limited Partnership.

I. Summary of EPA's Proposed Action on the Portions of the State of Montana's July 29, 1998 Submittal and All of the May 4, 2000 Submittal

We are proposing to approve the following provisions:

- YELP's emission limits in section 3(A)(1) through (3) and reporting requirements in section 7(C)(1)(b) of YELP's exhibit A submitted on May 4, 2000.
- Provisions related to the burning of SWS overheads in the F–1 Crude Furnace (and exhausted through the F–2 Crude/Vacuum Heater stack) at ExxonMobil in sections 3(E)(4) and 4(E) (excluding ''or in the flare'' and ''or the flare'' in both sections), 3(A)(2), and 3(B)(3) of ExxonMobil's exhibit A, submitted on July 29, 1998 and method #6A–1 of attachment #2 of ExxonMobil's exhibit A, submitted on May 4, 2000.
- Minor changes in sections 3, 3(A) and 3(B) (only the introductory paragraphs); and sections 3(E)(3), 6(B)(7), 7(B)(1)(d), 7(B)(1)(j), 7(C)(1)(b), 7(C)(1)(d), 7(C)(1)(f), and 7(C)(1)(l) of ExxonMobil's exhibit A, submitted on May 4, 2000.

We are proposing to limitedly approve and limitedly disapprove the following provisions:

- Provisions related to the fuel gas combustion emission limitations at ExxonMobil in sections 3(B)(2), 4(B), and 6(B)(3) of ExxonMobil's exhibit A, submitted on July 29, 1998 and section 3(A)(1) of ExxonMobil's exhibit A, submitted on May 4, 2000.
- Provisions related to ExxonMobil's coker CO-boiler emission limitation in sections 2(A)(11)(d), 3(B)(1) and 4(C) of ExxonMobil's exhibit A, submitted on May 4, 2000.
- Provisions related to the burning of SWS overheads at Cenex in sections 3(B)(2) and 4(D) (excluding ''or in the flare'' and ''or the flare'' in both sections), 3(A)(1)(d), and 4(B) of Cenex's exhibit A, submitted on July 29, 1998, and method #6A–1 of attachment #2 of Cenex's exhibit A, submitted on May 4, 2000.

We caution that if sources are subject to more stringent requirements under other provisions of the Act (*e.g.,* section 111 new source performance standards; Title I, Part C, (prevention of significant deterioration); or SIP-approved permit programs under Title I, Part A), our approval and limited approval of the SIP (including emission limitations and other requirements), would not excuse sources from meeting these other more stringent requirements. Also, our action on this SIP is not meant to imply any sort of applicability determination

under other provisions of the Act (*e.g.,* section 111; Title I, Part C; or SIP-approved permit programs under Title I, Part A).

II. Background

For a complete discussion of the SO2 SIP issues in the Billings/Laurel, Montana area *see* our July 28, 1999 proposed rulemaking action (64 FR 40791) (docket # III.A.–2).

In our July 28, 1999 action, we proposed to conditionally approve several provisions of the Billings/Laurel SO2 SIP based on commitments from the Governor of Montana to adopt specific enforceable measures by a specified date. *See* the July 28, 1999 **Federal Register** action, starting at page 40802, for a complete discussion of those parts of the plan we proposed to conditionally approve. On May 4, 2000, the Governor of Montana submitted a SIP revision to fulfill these commitments. Since the Governor has fulfilled his commitments, we believe it is not appropriate to take final action on the conditional approval. Instead, in this document we are proposing action on parts of the July 29, 1998 submittal (i.e., those parts we proposed to conditionally approve on July 28, 1999) and all of the May 4, 2000 submittal. In a separate document published today we are taking final action on the remainder of the July 29, 1998 submittal.

III. EPA's Proposed Action on Portions of the State of Montana's July 29, 1998 Submittal and All of the May 4, 2000 Submittal

A. Why Is EPA Proposing to Partially and Limitedly Approve and Limitedly Disapprove Parts of the July 29, 1998 and May 4, 2000 Submittals?

For the reasons given below we are proposing to partially and limitedly approve and limitedly disapprove parts of the July 29, 1998 and May 4, 2000 submittals. EPA believes proposing to partially and limitedly approve these parts of the Billings/Laurel SO2 SIP meets the requirements of section 110(l) of the Act. The provisions of the plan that we are proposing to partially and limitedly approve strengthen the Montana SIP by providing specific emission limits for several SO2 sources in Billings/Laurel. This will achieve progress toward attaining the SO2 NAAQS.

(1) YELP's Emission Limitations

In our July 28, 1999 action on the SO2 SIP for the Billings/Laurel, MT, area (64 FR 40791, page 40802, middle column), we proposed to conditionally approve the SIP as it applies to YELP's emission limitations in sections 3(A)(1) through (3) of YELP's exhibit A, based on the Governor's commitment to revise these provisions in the YELP exhibit. We were concerned that the emission limits in sections 3(A)(1) and (2) of YELP's exhibit A were not practically enforceable and that the emission limits in section 3(A)(3) were not clearly defined. With the May 4, 2000 submittal, the State revised sections 3(A)(1) through (3) of the YELP exhibit A to address our concerns and also revised section 7(C)(1)(b) to clarify a reporting requirement. We are proposing to approve sections 3(A)(1) through (3) and 7(C)(1)(b) of the YELP exhibit A. We realize, however, that the time-of-day-restricted and pro-rated emission limitations may be somewhat more difficult to enforce than a simple fixed limitation. If we were to find that the time-of-day-restricted or pro-rated emission limitations were too difficult to enforce, we would reconsider our approval. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act or take other appropriate action under the Act.

(2) ExxonMobil's F–2 Crude/Vacuum Heater Stack Emission Limitations and Attendant Compliance Monitoring Method

In our July 28, 1999 action (64 FR 40803, middle column) we proposed to conditionally approve the SIP as it applies to the F–2 crude/vacuum heater stack emission limitation and attendant compliance monitoring methods—sections 3(E)(4) and 4(E) (only as they apply to the F–2 crude/vacuum heater stack), 3(A)(2), 3(B)(3), and attachment #2, of ExxonMobil's exhibit A—based on the Governor's commitment to revise attachment #2 of the ExxonMobil exhibit.[1] We were concerned that method #6A of attachment #2, which contains the analytical method used to determine the H2S concentration in the sour water, was not acceptable. (The H2S concentration in the sour water is needed to monitor compliance with the F–2 crude/vacuum heater stack emission limitation.)

On reviewing the May 4, 2000 submittal and subsequent correspondence from the State and ExxonMobil, we believe the revised method #6A–1 (previously called method #6A) of attachment #2 is acceptable. On March 10, 2000, we submitted comments on the draft revision of the method when the State took the rule to public hearing. *See* document #IV.C–30. We wanted assurance that the method would measure all sulfide compounds and that no sulfide compounds would be lost when collecting and analyzing the sample. The State responded to our concern in an April 4, 2000 letter to us (*see* document #IV.C–33) and subsequently forwarded a letter ExxonMobil had sent the MDEQ, dated July 25, 2000 (*see* document #IV.C–37). The April 4, 2000 State letter and July 25, 2000 ExxonMobil letter address our concerns.

We are proposing to approve method #6A–1 of attachment #2 of ExxonMobil's exhibit A submitted with the State's May 4, 2000 submittal, and the attendant compliance monitoring methods, emission limitations and facility modifications in sections 3(E)(4) and 4(E) (excluding ''or in the flare'' and ''or the flare'' in both sections), 3(A)(2), and 3(B)(3) of ExxonMobil's exhibit A, submitted on July 29, 1998.

(3) ExxonMobil's Fuel Gas Combustion Emission Limitations and Attendant Compliance Monitoring Method

In our July 28, 1999 action (64 FR 40803, middle column), we proposed to conditionally approve the SIP as it applies to ExxonMobil's refinery fuel-gas combustion emission limitations and attendant compliance monitoring methods in sections 3(A)(1), 3(B)(2), 4(B), and 6(B)(3), of ExxonMobil's exhibit A, based on the Governor's commitment to address our concerns about the method for monitoring compliance with the emission limitation. We had concerns that H2S concentration in the refinery fuel gas could exceed the levels which the H2S CEMS was able to monitor.

With the May 4, 2000 submittal, the State did not address our concerns regarding the H2S CEMS. On March 10, 2000, we submitted comments on the draft SIP revision the State was taking to public hearing (*see* document #IV.C–30). In the public hearing documents, the State indicated that it would not be revising ExxonMobil exhibit A to address our concerns regarding the H2S CEMS. In our March 10, 2000 letter we indicated that even though it was rare for ExxonMobil's fuel gas H2S concentration to exceed the range of the

[1] Because we believe the emission limit and compliance monitoring method are not separable, in addition to proposing conditional approval of the compliance monitoring method in attachment #2 of ExxonMobil's exhibit A, we also proposed conditional approval of the emission limit and other related provisions in the exhibit. In addition, we proposed to conditionally approve all of attachment #2 of ExxonMobil's exhibit. We should have limited our proposed conditional approval to only method #6A of attachment #2.

H2S CEMS, we believed that ExxonMobil's exhibit A should be revised to address this issue. We suggested that exhibit A could be revised to require an alternative method to monitor H2S concentration when the range of the CEMS is exceeded, or to provide that any time the range of the CEMS is exceeded will be considered a violation of the refinery fuel gas emission limitation. In its April 4, 2000 letter to us, the State indicated that it believes the ExxonMobil fuel gas monitoring method is adequate for compliance monitoring purposes and that it is unnecessary and inappropriate to further modify ExxonMobil's monitoring requirements (*see* document #IV.C–33).

We continue to believe that ExxonMobil exhibit A is not acceptable, because the combustion emission limitation is not enforceable under all scenarios and thus, does not meet the requirements of section 110(a)(2)(A) of the Act that the SIP contain enforceable emission limitations. Therefore, we believe we cannot propose to fully approve the refinery fuel-gas combustion emission limitations and attendant compliance monitoring methods in sections 3(A)(1), 3(B)(2), 4(B), and 6(B)(3) of ExxonMobil's exhibit A.

However, we do believe it is appropriate to propose limited approval and limited disapproval of these provisions. In some cases, a SIP rule may contain certain provisions that meet the applicable requirements of the Act, but that are inseparable from other provisions that do not meet all the requirements. Although the submittal may not meet all of the applicable requirements, we may consider whether the rule, as a whole, has a strengthening effect on the SIP. If this is the case, limited approval may be used to approve a rule that strengthens the existing SIP as representing an improvement over what is currently in the SIP and as meeting some of the applicable requirements of the Act. At the same time we disapprove the rule for not meeting all of the applicable requirements of the Act. Under a limited approval/disapproval action, we approve and disapprove the entire rule even though parts of it do and parts do not satisfy requirements under the Act. The rule remains a part of the SIP, even though it has been limitedly disapproved, because the rule strengthens the SIP. The disapproval only concerns the failure of the rule to meet a specific requirement of the Act and does not affect incorporation of the rule as part of the approved, federally enforceable SIP.

Therefore, we are proposing to limitedly approve and limitedly disapprove sections 3(A)(1), 3(B)(2), 4(B), and 6(B)(3), of ExxonMobil's exhibit. We believe emission limitations under sections 3(A)(1) and 3(B)(2) are enforceable under most but not all scenarios. Because the limitations are not enforceable under all scenarios, we believe the SIP does not fully satisfy the requirement of section 110(a)(2)(A) of the Act that the SIP contain enforceable emission limitations. We believe limitedly approving these provisions will strengthen the SIP. However, we believe the SIP should also be revised to address the enforceability concern. As indicated in a separate action published today, we intend to propose a FIP to gap-fill those provisions of the Billings/Laurel SO2 SIP which are being disapproved. We would do the same here. If this proposed limited disapproval becomes a final action, we intend to address these concerns in a FIP.

(4) ExxonMobil's Coker CO-Boiler Emission Limitation

In our July 28, 1999 action (64 FR 40803, first column) we proposed to conditionally approve the SIP as it applies to the coker CO-boiler stack emission limitation in section 3(B)(1) of ExxonMobil's exhibit A, based on the Governor's commitment to adopt a compliance monitoring method for the coker CO-boiler stack emission limitation. The July 29, 1998 SIP submittal did not contain such a method.

For the May 4, 2000 SIP submittal, the State developed an empirical method to monitor compliance with ExxonMobil's coker CO-boiler stack emission limitation. The compliance monitoring method is an equation that was derived from historical testing and CEMS data, whereby one can determine pounds per hour of SO2 emissions from the coker CO-boiler by multiplying a constant by the coker fresh feed rate. On March 10, 2000, we submitted comments on the draft SIP revision the State was taking to public hearing (*see* document #IV.C–30).

We had three concerns with the State's empirical method for determining compliance with ExxonMobil's coker CO-boiler stack emission limitation: (1) The empirical method does not apply, and hence there is no compliance monitoring method, when the sulfur content of the reactor feed exceeds 5.11 percent of weight. We believe the SIP should contain a compliance monitoring method for all operating scenarios. (2) The compliance monitoring equation is basically the ''best fit'' line through the test data. To be more conservative, we believe the compliance monitoring equation should be the upper bound of the 95% confidence level of the equation. (3) Finally, since a feed-rate meter for the coker unit is required for the compliance monitoring method, the feed-rate meter should be subject to QA/QC requirements similar to those for the FCC feed-rate meter. Therefore, section 6(E) of ExxonMobil exhibit A should be revised to include the fresh feed-rate meter for the coker unit, along with the other monitor and meter mentioned in that section.

In its April 4, 2000 letter to us (document #IV.C–33), the MDEQ did not agree with our concerns (1) and (2), but did agree with our concern in (3). With respect to the concern in (3), MDEQ indicated that it would revise the SIP at a later time to address the concern. With respect to the concern that the empirical method does not provide a compliance monitoring method when the sulfur content of the reactor feed exceeds 5.11 percent by weight, our March 10, 2000 letter suggested that exhibit A should plan for the situation now. We state that exhibit A should indicate that if the sulfur content of the reactor feed exceeds 5.11 percent by weight, then the excess sulfur over the average sulfur content of the reactor feed from the testing results (which is 4.89 percent of weight) shall be assumed to be emitted as SO2 from the coker CO-boiler stack. Our letter provided some suggested calculations for determining the SO2 emissions from the coker CO-boiler when the sulfur content of the reactor feed exceeds 5.11 percent by weight. In its April 4, 2000 letter, the MDEQ provided several reasons why it did not agree with us. First, the MDEQ did not believe that the data supported the assumption that all sulfur contained in the reactor feed at concentrations above 4.89 percent is emitted as SO2. Second, the MDEQ concluded that such an approach would do nothing to improve the compliance monitoring method; it would simply set an arbitrary limit on the process feed rate. Third, the MDEQ believed the empirical method was reliable within the range tested, but had not concluded that the empirical method was not reliable outside that range. Rather, the MDEQ chose to reserve judgement on the empirical method's reliability outside the testing range. Finally, the MDEQ believed that the empirical method would be used infrequently. In addition, MDEQ questioned the reasons for our suggested calculations for determining SO2 emissions from the

coker CO-boiler when the sulfur content of the reactor feed exceeds 5.11 percent by weight.

We still believe that the test method should cover all operating scenarios; as currently written, the SIP provides no way to monitor compliance with the limit if the sulfur content of the reactor feed exceeds 5.11 percent by weight. Because the limitations are not enforceable under all scenarios, we believe the SIP does not satisfy section 110(a)(2)(A) of the Act. Therefore, there needs to be a method to monitor compliance when the sulfur content of the reactor feed exceeds 5.11 percent by weight. That method could be similar to the approach we suggested in our March 4, 2000 letter, or some other acceptable method.

With respect to the concern regarding the upper bound of the equation, we indicated in our March 4, 2000 letter to MDEQ that the compliance monitoring equation should be the upper bound of the 95% confidence level of the equation, in lieu of the ''best fit'' line through the test data. In an April 4, 2000 letter to us, MDEQ indicated that it believed the ''best fit'' line was appropriate because the coefficient of correlation (r) between the coker fresh feed rate and the corresponding SO2 emission is approximately 0.95, and the results of the Relative Accuracy (RA) test on the proposed monitoring method indicate an RA of 4.9%. An r-value 0.95 is generally considered indicative of a very strong relationship. Also, MDEQ believed that under our SO2 and NO**x** CEMS requirements, CEMS performance is considered acceptable if the RA tests yield a value of 20% or less.

We still believe that a conservative approach is necessary to assure that the empirical equation will adequately monitor compliance and thus assure attainment of the NAAQS. As can be seen in the scatter diagram in figure 1 of Tim Schug's August 16, 1999 letter to the MDEQ, contained in document # IV.C.–29, there are many points above the regression line (the regression line plus a constant is the equation used to monitor compliance with the coker CO-boiler emission limitation). Therefore, the regression line underestimates the measured emissions for these points. Using the 95% confidence interval (or some other approvable approach) would assure that the measured emissions for all test data points fall below the regression line.

Because of these three concerns, we cannot propose to fully approve the coker CO-boiler stack emission limitation and attendant compliance monitoring method in sections 3(B)(1), 2(A)(11)(d) and 4(C) of ExxonMobil's exhibit A, submitted on May 4, 2000. However, we believe it is appropriate to limitedly approve and limitedly disapprove these provisions. *See* discussion above, in section III.A.3, concerning limited approval and limited disapproval of SIPS.

Therefore, we are proposing to limitedly approve and limitedly disapprove sections 2(A)(11)(d), 3(B)(1) and 4(C) of ExxonMobil's exhibit A submitted on May 4, 2000. We believe the emission limitations under section 3(B)(1) are enforceable under some but not all scenarios. Because the emission limitations are not enforceable under all scenarios, we believe the SIP does not satisfy section 110(a)(2)(A) of the Act. We believe limitedly approving these provisions will strengthen the SIP. However, we believe the SIP should also be revised to address the concerns mentioned above. As indicated in a separate action published today, we intend to propose a FIP to gap-fill those provisions of the Billings/Laurel SO2 SIP which are being disapproved. We would do the same here. If this proposed limited disapproval becomes a final action, we intend to address these concerns in a FIP.

(5) Other Minor Changes to ExxonMobil's Exhibit A

In the May 4, 2000 submittal, other minor changes were made to ExxonMobil's exhibit A. The following sections were added or revised: section 3 was revised to add new introductory text; the introductory text of sections 3(A) and 3(B) was rewritten to more clearly explain how the emission limitations apply; section 3(E)(3) was revised to correct a referenced date; and sections 7(B)(1)(j) and 7(C)(1)(1) were added and sections 6(B)(7), 7(B)(1)(d), 7(C)(1)(b), 7(C)(1)(d) and 7(C)(1)(f) were revised because of other changes needed to address the coker CO-boiler issue.

We believe these minor changes are acceptable and are proposing to approve these additions and revisions.

(6) Cenex Sour Water Stripper (SWS)

In our July 28, 1999 action (64 FR 40803, right column) we proposed to conditionally approve the SIP as it applies to the combustion source emission limitation and the attendant compliance monitoring methods, sections 3(B)(2) and 4(D) (only as they apply to the main crude heater), 3(A)(1)(d), 4(B), and attachment #2, of Cenex's exhibit A, based on the Governor's commitment to revise attachment #2 of the Cenex exhibit.[2] We were concerned that method #6A of attachment #2, which contains analytical method used to determine the H2S concentration in the sour water, was not acceptable. (The H2S concentration in the sour water is needed to monitor compliance with the combustion source emission limitation when sour water stripper emissions are being combusted in the main crude heater.)

On reviewing the May 4, 2000 submittal and subsequent correspondence from the State and Cenex, we still believe the revised method #6A–1 (previously called method #6A) of attachment #2 is not acceptable. On March 10, 2000, we submitted comments on the draft revision of attachment #2 to Cenex's exhibit A when the State took the rule through public hearing. *See* document #IV.C–30. We wanted assurance that the method would measure all sulfide compounds and that no sulfide compounds would be lost as a result of collecting and analyzing the sample. The State responded to our concern in an April 4, 2000 letter to us (*see* document #IV.C–33) and subsequently followed up with a September 5, 2000 telefax containing a letter from Cenex to the MDEQ dated August 30, 2000 (*see* document #IV.C–38). Based on the September 5, 2000 telefax and August 30, 2000 Cenex letter, it does not appear that Cenex's method #6A–1 of attachment #2 will assure that all sulfide compounds will be measured.

Therefore, we believe we cannot propose to fully approve the combustion source emission limitation and attendant compliance monitoring methods—sections 3(A)(1)(d), 3(B)(2), 4(B), 4(D) and method #6A–1 of attachment #2 of the Cenex exhibit. However, we do not believe it is appropriate to limitedly approve and limitedly disapprove these provisions (excluding ''or in the flare'' and ''in the flare'' in sections 3(B)(2) and 4(D)). *See* discussion above, in section III.A.3, concerning limited approval and limited disapproval of SIPS.

Therefore, we are proposing to limitedly approve and limitedly disapprove sections 3(B)(2) and 4(D) (excluding ''or in the flare'' and ''in the flare'' in both sections), 3(A)(1)(d), 4(B), submitted on July 29, 1998, and method

[2] Because we believe the emission limit and compliance monitoring method are not separable, in addition to proposing conditional approval of the compliance monitoring method in attachment #2 of Cenex's exhibit, we also proposed conditional approval of the emission limit and other related provisions in Cenex's exhibit. Also, we proposed to conditionally approve all of attachment #2 of Cenex's exhibit. We should have limited our proposed conditional approval to only method #6A of attachment #2 of Cenex's exhibit.

#6A–1 of attachment #2 of the Cenex exhibit A submitted on May 4, 2000. We believe the emission limitations under 3(A)(1)(d) are enforceable under most but not all scenarios. The emission limitations may not be enforceable when sour water stripper overheads are burned in the main crude heater. Because the limitations are not enforceable under all scenarios, we believe the SIP does not meet section 110(a)(2)(A) of the Act. We believe limitedly approving these provisions will strengthen the SIP. However, we believe the SIP should also be revised to address the enforceability concern. As indicated in a separate action published today, we intend to proposed a FIP to gap-fill those provisions of the Billings/Laurel SO2 SIP which are being disapproved. We would do the same here. If this proposed limited disapproval becomes a final action, we intend to address these concerns in a FIP.

B. What Happens When EPA Approves Parts of the State of Montana's Plan?

One we approve a SIP, or parts of a SIP, the portions approved are legally enforceable by us and citizens under the Act.

C. What Happens When EPA Limitedly Approves or Limitedly Disapproves Parts of the State of Montana's Plan?

Once we limitedly approve/disapprove a SIP, or parts of SIP, the SIP provisions are legally enforceable by us and citizens under the Act. Under a limited approval/disapproval action, we approve and disapprove the entire rule even though parts of it do and parts do not satisfy requirements under the Act. The rule remains a part of the SIP, however, even though there is a disapproval, because the rule strengthens the SIP. The disapproval only concerns the failure of the rule to meet specific requirements of the Act and does not affect incorporation of the rule as part of the approved, federally enforceable SIP.

IV. Request for Public Comment

We are soliciting public comment on all aspects of this proposed SIP rulemaking action. Send you comments in duplicate to the address listed in the front of this Notice. We will consider your comments in deciding our final action if your letter is received before [insert date, 30 days from publication].

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to partially or limitedly approve and limitedly disapprove a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirement of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

E. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed partial and limited approval rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already

imposing. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of 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).

Moreover, EPA's proposed limited disapproval rule will not have a significant impact on a substantial number of small entities because the proposed limited disapproval action only affects two industrial sources of air pollution in Billings/Laurel, Montana: Cenex Harvest Cooperatives and ExxonMobil Company, USA. Only a limited number of sources are impacted by this action. Furthermore, as explained in this action, the submission does not meet the requirements of the Clean Air Act and EPA cannot approve the submission. The proposed limited disapproval will not affect any existing State requirements applicable to the entities. Federal disapproval of a State submittal does not affect its State enforceability. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepared 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 the 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 proposed partial and limited approval and limited disapproval actions do 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 proposes to partially and limitedly approve and limitedly disapprove 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.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

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

March 26, 2002.

Jack M. McGraw,

Acting Regional Administrator, Region 8.

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