

APPENDIX 13

EPA Approval of Wisconsin's Emission Statement Program

37 CFR Parts 1, 5 and 10

[Docket No. 920779-3226]

RIN 0851-AA34

Miscellaneous Changes in Patent Practice; Correction

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: The Patent and Trademark Office (Office) is correcting errors in the final rule which appeared in the *Federal Register* on Friday, October 22, 1993 (58 FR 54504). The regulations related to miscellaneous changes in patent practice contained in parts 1, 5 and 10.

EFFECTIVE DATE: January 3, 1994.

FOR FURTHER INFORMATION CONTACT:

Abraham Hershkovitz by telephone at (703) 305-9282, or by facsimile transmission at (703) 305-8825, or by mail marked to his attention and addressed to: Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:**Background**

The final regulations that are the subject of these corrections, make miscellaneous changes to the rules of practice in patent cases.

Need for Correction

As published, the final regulations contain errors, including the effective date, which may be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on October 22, 1993, of the final regulations (Docket No. 920779-3226), which were the subject of FR Doc. 93-25865, is corrected as follows:

1. On page 54504, in the second column, the Effective Date: should read "January 3, 1994."

2. On page 54505, first column, the second to last line of the first full paragraph, the "§ 029" should be removed.

Dated: November 29, 1993.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.
[FR Doc. 93-29599 Filed 12-3-93; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI38-01-6031; FRL-4809-5]

Approval and Promulgation of Wisconsin Implementation Plan; Emission Statements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. EPA is approving a revision to Wisconsin's State Implementation Plan (SIP) submitted by the State of Wisconsin to implement an emission statement program for stationary sources throughout the State. The implementation plan was submitted by the State to satisfy the Federal requirements for an emission statement program in ozone nonattainment areas.

EFFECTIVE DATE: This action will be effective February 4, 1994, unless notice is received on or before January 5, 1994, that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the *Federal Register*.

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

Copies of the SIP revision and U.S. 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. (It is recommended that you telephone Megan Beardsley at (312) 886-0669 before visiting the Region 5 Office.)

A copy of this Wisconsin section 182 SIP revision is available for inspection from Jerry Kurtzweg (ANR-443), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Megan Beardsley, Air Toxics and Radiation Branch, Regulation Development Section (AT-18)), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604. (312) 353-6680.

SUPPLEMENTARY INFORMATION:**I. Background**

The SIP requirements for ozone nonattainment areas are set out in subparts I and II of part D of title I of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 ("the Act").

Section 182 of the Act sets out a graduated control program for ozone nonattainment areas. Paragraph 182(a) sets out requirements applicable in marginal nonattainment areas, which are also made applicable in paragraphs (b), (c), (d), and (e) to all other ozone nonattainment areas.

Paragraph 182(a)(3) requires that States implement rules that require stationary sources to submit to the State annual emission statements showing actual emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_x). These rules were to be submitted as a revision to the SIP by November 15, 1992. When Wisconsin failed to submit complete rules by this deadline, U.S. EPA began a sanctions process against the State. On July 2, 1993, Wisconsin submitted the current emission statement SIP revision. On August 4, 1993, U.S. EPA sent Wisconsin a letter notifying the State that this submittal was complete and that the completeness finding ended the sanctions process for the emission statement SIP revision.

II. Evaluation of State Submission**A. Procedural Background**

The Act requires States to observe certain procedural requirements in developing its SIP, of which the emission statement program will become a part. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.¹ Section 110(l) similarly provides that each revision to an implementation plan submitted by a State under the Act must have been adopted by such State after reasonable notice and public hearing.

The State of Wisconsin held public hearings on December 8, 10 and 11, 1992, to solicit public comment on the emission statement rule, "Air Contaminant Emission Inventory Reporting Requirements," chapter NR 438 of the Wisconsin Administrative Code. Following the public hearing, the rule was adopted by the State and became effective June 1, 1993. The rule was submitted to U.S. EPA on July 2, 1993, as a proposed revision to the SIP.

The proposed SIP revision was reviewed by the U.S. EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete, and a letter indicating the completeness of

¹ Also, section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

the submittal was sent to the governor's delegate on August 4, 1993.

B. Components of the Emission Statement Program

The U.S. EPA has published a "General Preamble" describing the U.S. EPA's preliminary views on how the U.S. EPA intends to review SIP's and SIP revisions submitted under title I of the Act (see 57 FR 13498 (April 16, 1992) ("SIP: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990"), 57 FR 18070 (April 28, 1992) ("Appendices to the General Preamble"), and 57 FR 55620 (November 25, 1992) ("SIP: NO_x Supplement to the General Preamble").

The U.S. EPA has also issued draft "Guidance on the Implementation of an Emission Statement Program" (July 1992). It should be noted that this guidance has not been finalized,² but does provide the best available guidance on the content and use of emission statements. Further revisions to this draft guidance were not available prior to final rulemaking on the Wisconsin SIP revision. Therefore, it is appropriate to use the July 1992 draft guidance in evaluating Wisconsin's emission statement submittal.

The draft guidance contains the following criteria for evaluating State emission statement programs.

1. Applicability

The State program must include provisions covering applicability of the regulations. The State may exempt individual sources emitting less than 25 tons per year of actual NO_x or VOC if the State provides an inventory of emissions from such class or category of sources, based on the use of emission factors established by the Administrator or other methods acceptable to the Administrator. However, if either NO_x or VOC is emitted at a rate equal to or greater than 25 tons per year, the source shall not be exempt.

Wisconsin's NR 438 is applicable to any person owning or operating a facility that emits an air contaminant in quantities above the minima listed in NR 438. In particular, sources must report annual, actual emissions of NO_x exceeding 5 tons per year (tpy) and annual, actual emissions of VOC exceeding 3 tpy.

2. Definitions

The State program must include definitions for key terms used in the regulations. Wisconsin's NR 438

includes specific definitions for "facility," and "source classification code." Other relevant definitions are established in NR 400, which is applicable to terms used in NR 400 to 499.

3. Compliance Schedule

The State program must include a compliance schedule for sources covered by the regulations. In particular, the State shall require sources emitting NO_x or VOC in ozone nonattainment areas to submit emission statement data before November 15, 1993, and annually thereafter. The U.S. EPA, however, strongly encourages a submittal date of April 15.

Wisconsin's regulation requires that sources report emissions by March 1 of each year. Beginning June 1993, sources must certify their emissions by June 30 of each year.

4. Source Information

When requesting an emission statement from sources of NO_x or VOC, the State shall require the following information from the source:

- Source identification information;
- Operating schedule;
- Emissions information;
- Control equipment information;
- Process data; and
- Certification of data accuracy.

Wisconsin fulfills the criteria for source information. In particular:

a. Source Identification. Wisconsin requires that sources reporting emissions provide their name, location, mailing address, and Standard Industrial Classification code, as well as additional information not addressed in the Federal guidance.

b. Operating Schedule. Wisconsin requires that sources provide their normal operating schedule in hours per day, days per week, days per year and percentage production per quarter.

c. Emissions Information. Wisconsin requires that facilities with emissions exceeding 5 tons per year of NO_x or 3 tons per year of VOC submit an emission inventory report of annual, actual emissions or supply sufficient information for Wisconsin Department of Natural Resources (WDNR) to calculate these emissions. Wisconsin also requires sources to report annual, actual emissions for several hundred other pollutants if emissions of these pollutants exceed the quantities listed in NR 438.

d. Control Equipment. Wisconsin requires that sources report control equipment and control equipment efficiency for the following types of emissions: Fugitive emissions, emissions from fuel combustion units,

emissions from manufacturing processes, and emissions from incinerator equipment.

e. Process Data. Wisconsin requires process data for fuel combustion equipment, manufacturing processes and incineration equipment. The WDNR will compute the peak ozone season daily process rate based on the reported percentage production per quarter for the third quarter (July, August and September).

f. Certification. Wisconsin requires that, by June 30 of each year, the owner or operator of a facility that emits VOC or NO_x in a nonattainment area or is required to obtain an air pollutant control permit shall send written certification to WDNR that the WDNR's summary of the facility's emissions is correct.

Wisconsin has developed a series of forms for the emission reporting and certification described above.

5. State Reporting

In addition to the required SIP revision, the U.S. EPA guidance requests that the State enter the source data elements into the Aerometric Information Retrieval System (AIRS) and provide U.S. EPA with quarterly emission statement status reports beginning July 1, 1993.

Wisconsin has submitted its first quarterly report and has agreed to continue submitting these reports. Wisconsin also has agreed to continue working to load its emission inventory information into the AIRS database.

C. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and the U.S. EPA. Wisconsin's emission statement rule includes a schedule for source submittal of emission statements and details the data to be included in the statements. Under NR 494 of the Wisconsin Administrative Code, "Enforcement and Penalties for Violation of Air Control Provisions," any person who violates NR 438 is subject to the penalties provided under § 144.426 of the Wisconsin Statute.

D. Conclusion

U.S. EPA has reviewed Wisconsin's emission requirements set forward in the Clean Air Act and in the guidance discussed above. Hence, the U.S. EPA approves the emission statement SIP revision submitted to the U.S. EPA by Wisconsin on July 2, 1993.

Because the U.S. EPA considers this action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on February 4, 1994. However,

² The EPA is presently conducting a rulemaking process to modify title 40 of the CFR to reflect the requirements of the emission statement program.

if we receive notice by January 5, 1994, that someone wishes to submit adverse comments, then U.S. EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The U.S. EPA shall consider each request for revision to the SIP 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 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. The U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on the U.S. EPA's request. This request is still applicable under Executive Order 12866.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, U.S. 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, U.S. 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.

Approvals of SIP's under section 110 and subchapter I, part D, of the Act 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, I certify 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 Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids U.S. EPA to base its actions

concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 248, 256-66 (1976)).

C. Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Emission statements, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Oxides of nitrogen, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 17, 1993.

Dale S. Bryson,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(70) to read as follows:

§ 52.2570 Identification of plan.

(c) * * *

(70) On July 2, 1993, the State of Wisconsin submitted a requested revision to the Wisconsin State Implementation Plan (SIP) intended to satisfy the requirements of section 182 (a)(3)(B) of the Clean Air Act as amended in 1990. Included were State rules establishing procedures for stationary sources throughout the state to report annual emissions of volatile organic compounds (VOC) and oxides of nitrogen (NO_x) as well as other pollutants.

(i) *Incorporation by reference.* Wisconsin Administrative Code, Chapter NR 438, Air Contaminant

Emission Reporting Requirements, published in the Wisconsin Register, May 1993, effective June 1, 1993.

(FR Doc. 93-28721 Filed 12-3-93; 8:45 am)
BILLING CODE 5560-50-P

40 CFR Part 52

[CA 15-1-6084; FRL-4801-4]

Approval and Promulgation of Implementation Plans California State Implementation Plan Revision Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is finalizing the approval of a revision to the California State Implementation Plan (SIP) proposed in the Federal Register on January 17, 1991. The revision concerns Ventura County Air Pollution Control District (VCAPCD) Rule 71.2, Storage of Reactive Organic Compound Liquids. This approval action will incorporate the rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC emissions from the storage of reactive organic compound (ROC) liquids. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on January 5, 1994.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:
Rulemaking Section II (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Jerry Kurtzweg ANR 443, 401 "M" Street, SW., Washington, DC 20460
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, California 93003.