

- (1) Lighting or maintaining a fire.
- (2) Camping.
- (3) Entering the area after visiting hours. Visiting hours will be posted at the entrance gate.

(d) *Slana Developed Area (SDA)*. For purposes of this section, the Slana Developed Area consists of all park areas within a ¼ mile radius of the Slana Ranger Station.

(e) *KNHL and developed area closures and restrictions*. The Superintendent may prohibit or otherwise restrict activities in the KNHL, Headquarter/ Visitor Center Developed Area, and Slana Developed Area to protect public health and safety or park resources. Information on closures and restrictions will be available at the park visitor center. Violating such closures or restrictions is prohibited.

Notwithstanding the provisions of this section, the Superintendent may issue a Special Use Permit to authorize uses in the KNHL and either developed area.

Dated: March 17, 2004.

**Paul Hoffman,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 04-7131 Filed 4-1-04; 8:45 am]

BILLING CODE 4310-PW-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[WA-04-002; FRL-7642-6]

### Approval and Promulgation of Implementation Plans; Washington

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA invites public comment on its proposal to approve numerous revisions to the State of Washington Implementation Plan. The Director of the Washington State Department of Ecology (Ecology) submitted two requests to EPA dated September 24, 2001 and February 9, 2004 to revise certain sections of the Puget Sound Clean Air Agency's (PS Clean Air) regulation. The revisions were submitted in accordance with the requirements of section 110 of the Clean Air Act (hereinafter the Act). EPA is not approving in this rulemaking a number of submitted rule provisions which are inappropriate for EPA approval and is taking no action on a number of other provisions that are unrelated to the purposes of the implementation plan.

EPA also invites public comment on its proposal to approve certain source-

specific State implementation plan (SIP) revisions relating to Saint Gobain Containers and LaFarge North America.

**DATES:** Written comments must be received on or before May 3, 2004.

**ADDRESSES:** Comments may be sent either by mail or electronically. Written comments should be addressed to Roylene A. Cunningham, EPA, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, Washington 98101. Electronic comments should be sent either to [r10.aircom@epa.gov](mailto:r10.aircom@epa.gov) or to <http://www.regulations.gov>, which is an alternative method for sending electronic comments to EPA. To send comments, please follow the detailed instructions described in the **SUPPLEMENTARY INFORMATION** section, Part VIII, General Information.

Copies of the State's request and other information supporting this proposed action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Washington, Department of Ecology, P.O. Box 47600, Olympia, Washington 98504-7600. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. A reasonable fee may be charged for copies.

**FOR FURTHER INFORMATION CONTACT:**

Roylene A. Cunningham, EPA, Office of Air Quality (OAQ-107), Seattle, Washington 98101, (206) 553-0513, or e-mail address: [cunningham.roylene@epa.gov](mailto:cunningham.roylene@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Background of Submittal
- II. Requested Sections to be Approved into the SIP, but not IBR'd
  - A. Key Changes to PS Clean Air's SIP
  - B. Summary of Action
    - 1. Sections 3.01 through 3.21 in Regulation I, Article 3: General Provisions
    - 2. Section 3.23 Alternate Means of Compliance
- III. Requested Sections to be IBR'd into the SIP
  - A. Key Changes to PS Clean Air's SIP
  - B. Summary of Action
    - 1. Provisions Approved by EPA and IBR'd
    - 2. Provisions not Approved by EPA
    - 3. Provisions on Which EPA is Taking No Action at this Time
- IV. Requested Sections to be Removed from the SIP
  - A. Summary of Action
    - 1. Regulation I
    - 2. Regulation II
    - 3. Regulation III
- V. Saint Gobain Containers, NOC Order of Approval #8244
  - A. Background
  - B. Summary of Action

VI. LaFarge North America, NOC Order of Approval #5183

A. Background

B. Summary of Action

VII. Geographic Scope of SIP Approval

VIII. General Information

IX. Statutory and Executive Order Reviews

### I. Background of Submittal

On February 9, 2004, the Director of Ecology submitted a request to EPA to revise certain sections of PS Clean Air's regulation, which has been referred to as the PS Clean Air Cleanup or Resolution #1004. PS Clean Air adopted Resolution #1004 in order to facilitate the State Implementation Plan Process Improvement Project (SIP PIP), which was initiated by EPA Region 10 to simplify preparing and adopting SIP revisions. An important element of this process is to not include in the SIP portions of those regulations that are not related to attainment or maintenance of the NAAQS or to the requirements for SIPs under the Act. Another important element of this process is to include in the SIP, but not to submit for incorporation by reference into Federal law, portions of regulations that provide legal authority necessary to meet the requirements of title I of the Act, but do not directly regulate air emissions, because incorporating such general authority provisions by reference into Federal law is unnecessary and could potentially conflict with EPA's independent authorities. PS Clean Air also had as a goal to eliminate, where possible, duplicate regulations found in Ecology regulations and EPA regulations.

PS Clean Air is therefore requesting that all sections of their currently SIP approved regulations that are not related to criteria pollutants or to the requirements for SIPs under title I of the Act be removed from the SIP and has submitted a current version of their regulations to EPA as a SIP revision. The current submittal includes only those sections or regulations relating to criteria pollutants or to the requirements for SIPs and designates those provisions that are being submitted as part of the SIP but that should not be incorporated by reference into Federal law.

### II. Requested Sections to be Approved Into the SIP, but not IBR'd

#### A. Key Changes to PS Clean Air's SIP

Only three out of the eleven sections in Regulation I, Article 3: General Provisions have been revised since they were last approved into the SIP. These include Sections 3.01, Duties and Powers of the Control Officer; 3.11, Civil Penalties; and 3.17, Appeal of Orders. The revisions to these three sections are

limited to editorial changes such as, Agency name changes; updated penalty fees; and references to the authority of the Board in addition to the Control Officer.

#### B. Summary of Action

##### 1. Sections 3.01 through 3.21 in Regulation I, Article 3: General Provisions

EPA is proposing to approve the following sections as part of the SIP: Sections 3.01, Duties and Powers of the Control Officer, adopted September 9, 1999; 3.05, Investigations by the Control Officer, adopted February 10, 1994; 3.07, Compliance Tests, adopted February 9, 1995; 3.09, Violations—Notice, adopted August 8, 1991; 3.11, Civil Penalties, adopted September 26, 2002; 3.13, Criminal Penalties, adopted August 8, 1991; 3.15, Additional Enforcement, adopted August 8, 1991; 3.17, Appeal of Orders, adopted October 8, 1998; 3.19, Confidential Information, adopted August 8, 1991; and 3.21, Separability, adopted August 8, 1991.

These provisions do not regulate air emissions, but rather, describe general authorities such as investigative and enforcement authorities. Incorporation by reference of such provisions into Federal law is unnecessary and could potentially conflict with EPA's independent authorities. Therefore, EPA is proposing to not incorporate by reference these sections into the SIP and to remove the previous versions of these regulations from PS Clean Air's incorporation by reference section of the Washington State SIP, as follows: Sections 3.01, Duties and Powers of the Control Officer, adopted February 10, 1994; 3.05, Investigations by the Control Officer, adopted February 10, 1994; 3.07, Compliance Tests, adopted February 9, 1995; 3.09, Violations—Notice, adopted August 8, 1991; 3.11, Civil Penalties, adopted September 12, 1996; 3.13, Criminal Penalties, adopted August 8, 1991; 3.15, Additional Enforcement, adopted August 8, 1991; 3.17, Appeal of Orders, adopted August 8, 1991; 3.19, Confidential Information, adopted August 8, 1991; and 3.21, Separability, adopted August 8, 1991.

##### 2. Section 3.23 Alternate Means of Compliance

This section grants PS Clean Air authority to allow other emission methods to be used to achieve compliance with the emission standards of PS Clean Air's regulation if the owner or operator demonstrates that the alternative methods are at least as effective as the required method and if the alternative method is included in a

permit or regulatory order. Section 3.23 essentially authorizes PS Clean Air to issue variances from regulatory requirements. EPA approved this provision into the SIP on August 6, 1997 (62 FR 42216). Although PS Clean Air has requested that this provision not be incorporated by reference, the agency did submit it as part of its SIP submittal.

EPA believes that it erred when it approved this section as part of the SIP. Section 110(i) of the Act specifically precludes States from changing the requirements of the SIP except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section 110 of the Act and the implementing regulations at 40 CFR Part 51. *See* CAA section 110(l); 40 CFR 51.104. Section 51.104(d) specifically states that in order for a variance to be considered for approval as a SIP revision, the State must submit it in accordance with the requirements of 40 CFR 51.104, which includes the public notice, comment and hearing provisions of 40 CFR 51.102. Section 3.23 does not meet all of the requirements of section 110 of the Act, such as ensuring attainment and maintenance of the NAAQS. Section 3.23 allows the Control Office to approve "alternative methods" for achieving compliance if the Control Officer finds that the alternative methods are "at least as effective" as the required methods. This provision, however, does not contain specific, objective, and replicable criteria for determining if such "alternative methods" are in fact at least as effective as the required methods in terms of emission rates and ambient impacts. In addition, Section 3.23 states that such alternative means of compliance are to be established in regulatory orders issued under Section 3.03 or permits issued under Article 6 or 7. Section 3.03 is not part of the Washington SIP and orders issued under that provision are not Federally enforceable. In addition, regulatory orders issued under Section 3.03 are not sent to EPA for review prior to issuance. With respect to permits issued under Article 6, there is no requirement that all permits issued under Article 6 establishing such alternative means of compliance be subject to public review. Public and EPA review of revisions to the SIP are important elements of the SIP revision process.

Moreover, EPA's approval of the Washington SIP specifically states that any variance, exception, exemption, alternative emission limit, bubble, alternative sampling or testing method, compliance schedule revision, alternative compliance schedule or any

other substantial change to a provision of the SIP must be submitted by the State for approval in accordance with 40 CFR 51.104 and that any such change does not modify the requirements of the Federally-promulgated SIP until it has been approved by EPA as an amendment to the SIP in accordance with section 110 of the Act. *See* 40 CFR 52.2476(b) and (c). Therefore, it is not appropriate for EPA to approve this provision into the SIP.

Section 110(k)(6) of the Act authorizes EPA, upon a determination that EPA's action approving, disapproving or promulgating any SIP or plan revision (or any part thereof) was in error, to revise such action as appropriate in the same manner as the approval, disapproval or promulgation. In making such a correction, EPA must provide such determination and the basis therefore to the State and the public. EPA is by this proposal notifying the PS Clean Air, Ecology and the public that EPA is removing Section 3.23 from the SIP and from incorporation by reference into Federal law.

It is important to emphasize that if PS Clean Air issues an order or permit in reliance on Section 3.23 that approves an alternative to a PS Clean Air regulation that has been approved as part of the SIP, EPA is not precluded from enforcing the Federally-approved SIP limit against the source. The granting of an alternative method of compliance by PS Clean Air to a SIP requirement does not change the Federally-enforceable SIP requirement for that source unless and until the alternative has been approved by EPA as a source-specific SIP revision.

### III. Requested Sections To Be IBR'd Into the SIP

#### A. Key Changes to PS Clean Air's SIP

The docket includes a technical support document which describes in detail the substantive changes to the PS Clean Air rules that have been submitted by Ecology as revisions to the SIP, EPA's evaluation of the changes, and the basis for EPA's proposed action. In general the revisions were minor in nature and were made to improve the overall clarity, effectiveness, and enforceability of PS Clean Air's regulation.

#### B. Summary of Action

##### 1. Provisions Approved by EPA and IBR'd

EPA has determined that the following sections are consistent with the requirements of title I of the Act and is proposing to approve them as part of

the SIP and incorporate them by reference into Federal law:

*Regulation I*, Sections 1.01, Policy; 1.03, Name of Agency; and 1.05, Short Title, adopted September 9, 1999; 3.04, Reasonably Available Control Technology [except (e)], adopted March 11, 1999; 3.06 Credible Evidence, adopted October 8, 1998; 5.03, Registration Required [except (a)(5)], adopted July 8, 1999; 5.05 General Reporting Requirements for Registration, adopted September 10, 1998; 7.09, General Reporting Requirements for Operating Permits, adopted September 10, 1998; 8.04, General Conditions for Outdoor Burning; 8.05, Agricultural Burning; 8.09, Description of King County No-Burn Area; 8.10, Description of Pierce County No-Burn Area; and 8.11, Description of Snohomish County No-Burn Area, adopted November 9, 2000; and 8.12, Description of Kitsap County No-Burn Area, adopted October 24, 2002; 9.03, Emission of Air Contaminant: Visual Standard [except (e)], adopted March 11, 1999; 9.04, Opacity Standards for Equipment with Continuous Opacity Monitoring Systems [except (d)(2) and (f)], adopted April 9, 1998; 9.09, Particulate Matter Emission Standards, adopted April 9, 1998; 9.15, Fugitive Dust Control Measures, adopted March 11, 1999; 9.16, Spray-Coating Operations, adopted July 12, 2001; 12.01, Applicability and 12.03, Continuous Emission Monitoring Systems [except (b)(1) and (b)(2)], adopted April 9, 1998; 13.01, Policy and Purpose, adopted September 9, 1999; and 13.02, Definitions, adopted October 8, 1998.

*Regulation II*, Sections 1.01, Purpose; 1.02, Policy; 1.03, Short Title; and 1.05, Special Definitions, adopted September 9, 1999; 2.01, Definitions, adopted July 8, 1999; 2.07, Gasoline Stations, adopted December 9, 1999; 2.08, Gasoline Transport Tanks, adopted July 8, 1999; and 3.02, Volatile Organic Compound Storage Tanks, July 8, 1999.

## 2. Provisions Not Approved by EPA

EPA is proposing not to approve certain provisions, which EPA believes are inconsistent with the requirements of the Act. To the extent such provisions are currently incorporated by reference into the SIP, EPA is proposing to remove them from the SIP.

Subsections 5.03(a)(5), 9.03(e), 9.04(d)(2), 9.04(f), and 12.03(b)(2) each authorize PS Clean Air to modify standards or requirements relied on to attain and maintain the NAAQS by granting an exemption or alternative to such requirements without going through a SIP revision and, as such, are

not approvable. As discussed above, section 110(i) of the Act specifically precludes States from changing the requirements of the SIP except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section 110 of the Act and the implementing regulations at 40 CFR part 51. See CAA section 110(l); 40 CFR 51.104. Section 51.104(d) specifically states that in order for a variance to be considered for approval as a SIP revision, the State must submit it in accordance with the requirements of 40 CFR 51.104, which includes the public notice, comment and hearing provisions of 40 CFR 51.102.

Subsections 5.03(a)(5), 9.03(e), 9.04(d)(2), 9.04(f), and 12.03(b)(2) do not meet all of the requirements of section 110 of the Act, such as ensuring attainment and maintenance of the NAAQS. None of these provisions contain sufficiently specific, objective, and replicable criteria for determining if the exemption or alternative methods or requirements will, in fact, be at least as effective as the required methods or requirements in terms of emission rates and ambient impacts. Moreover, none of the provisions ensure that the approval of such exemptions or alternatives will be subject to EPA and public review. In the case of an exemption granted under Subsection 5.03(a)(5), there is no review at all of the granting of the exemption. In the case of Subsections 9.03(e), 9.04(d)(2), 9.04(f), and 12.03(b)(2), the approval of the alternative or exemption will be contained in an order or permit issued under Section 3.03 or Article 6. As stated above, Section 3.03 is not part of the Washington SIP and orders issued under that provision are not Federally enforceable. In addition, regulatory orders issued under Section 3.03 are not sent to EPA for review prior to issuance. With respect to permits issued under Article 6, there is no requirement that all permits issued under Article 6 establishing such alternative methods or requirements be subject to public review. Public and EPA review of revisions to the SIP are important elements of the SIP revision process.

Moreover, EPA's approval of the Washington SIP specifically states that any variance, exception, exemption, alternative emission limit, bubble, alternative sampling or testing method, compliance schedule revision, alternative compliance schedule or any other substantial change to a provision of the SIP must be submitted by the State for approval in accordance with 40 CFR 51.104 and that any such change does not modify the requirements of the Federally-promulgated SIP until it has

been approved by EPA as an amendment to the SIP in accordance with section 110 of the Act. See 40 CFR 52.2476(b) and (c). Therefore, it is not appropriate for EPA to approve these provisions into the SIP.

Section 110(k)(6) of the Act authorizes EPA, upon a determination that EPA's action approving, disapproving or promulgating any SIP or plan revision (or any part thereof) was in error, to revise such action as appropriate in the same manner as the approval, disapproval or promulgation. In making such a correction, EPA must provide such determination and the basis therefore to the State and the public. EPA is by this proposal notifying the PS Clean Air, Ecology and the public that EPA is removing from the SIP and from incorporation by reference into Federal law Subsection 9.03(e) (State adoption date September 8, 1994; EPA effective date June 29, 1995) and Section 9.09(c)<sup>1</sup> (State adoption date February 10, 1994; EPA effective date June 29, 1995).

It is important to emphasize that, even if PS Clean Air grants an exemption to registration, an alternate opacity standard, or an exemption from a data recovery requirement, which exemption or alternative has not been approved as part of the Washington SIP, EPA is not precluded from enforcing the Federally-approved SIP registration requirement, opacity limit, or monitoring requirement against the source. As provided in 40 CFR 52.2476, the granting of such an exemption or alternate opacity standard by PS Clean Air to a SIP requirement does not change the Federally-enforceable SIP requirement for that source unless and until the exemption or alternate has been approved by EPA as a source-specific SIP revision.<sup>2</sup>

Subsection 12.03(b)(1) is different in effect from the other provisions that EPA is not approving in this action. This provision authorizes the Control Officer to excuse or exempt an owner or operator from periods of monitoring downtime if the owner or operator demonstrates to the Control Officer that the downtime was not the result of inadequate design, operation, or maintenance, or any other reasonably preventable condition and any necessary repairs to the monitoring

<sup>1</sup> Note Subsection 9.04(d)(2) was revised to incorporate the substantive provisions of Section 9.09(c) and Section 9.09(c), which was previously approved as part of the SIP, was deleted.

<sup>2</sup> Note that PS Clean Air has also not submitted as part of this SIP submittal Sections 3.03, General Regulatory Orders, and Article IV, Variances. These provisions also could be used to change requirements approved as part of the SIP without a SIP revision. As such, they are not approvable under title I of the Act for the reasons stated above and EPA is in no way approving such provisions.

system are conducted in a timely manner. In contrast to the other provisions discussed in this section, Subsection 12.03(b)(1) authorizes the Control Officer to excuse an event after the occurrence of the event. As such, Subsection 12.03(b)(1) is in essence an enforcement discretion provision. Although this provision does have objective criteria relating to the exercise of this discretion, the provision does not clarify that the Control Officers's determination that compliance with the data recovery requirements should be excused is not binding on EPA or citizens. As such, it is not appropriate for EPA to approve such a provision. See Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Monitoring, and Robert Perciasepe, Assistant Administrator for Air And Radiation, to the Regional Administrators, entitled *State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown*, p. 3 (September 20, 1999).

### 3. Provisions on Which EPA is Taking No Action at this Time

Article 1, Section 1.07, Definitions, has been revised since this SIP submission was submitted to EPA. PS Clean Air will be submitting the revisions to Section 1.07 to EPA in a separate action. EPA will therefore be taking action on this section in a separate rulemaking.

## IV. Requested Sections To Be Removed from the SIP

PS Clean Air has requested that EPA remove certain provisions from the SIP because they are not required elements of a SIP under title I of the Act or because they have been previously repealed by the Agency.

### A. Summary of Action

EPA proposes to take the following action on the provisions which PS Clean Air has requested be removed from the SIP.

#### 1. Regulation I

##### *Section 5.07, Registration Fees*

Section 5.07, Registration Fees (adopted September 11, 1997) was inappropriately approved into the SIP. Local fee provisions that are not economic incentive programs and are not designed to replace or relax a SIP emission limit are generally not appropriate for inclusion into the SIP. While it is appropriate for local agencies to implement fee provisions, for example, to recover costs for issuing permits, it is generally not appropriate

to make local fee collection Federally enforceable. Therefore, EPA is proposing to remove Section 5.07, Registration Fees, from the SIP.

##### *Sections 8.02, Outdoor Fires—Prohibited Types, and 8.03, Outdoor Fires—Prohibited Areas*

Sections 8.02, Outdoor Fires—Prohibited Types (adopted February 8, 1996), and 8.03, Outdoor Fires—Prohibited Areas (adopted February 9, 1995), were repealed by PS Clean Air's Board by Resolution No. 933 on November 9, 2000. The requirements of these provisions are included in the new Section 8.04, General Conditions for Outdoor Burning (adopted November 9, 2000), through incorporation by reference of the provisions of WAC 173-425. Removing these provisions from the SIP does not change the stringency of the SIP because Section 8.04 is being submitted for inclusion into the SIP. Therefore, EPA is proposing to remove Sections 8.02, Outdoor Fires—Prohibited Types and 8.03, Outdoor Fires—Prohibited Areas from the SIP.

##### *Sections 9.11, Emission of Air Contaminant: Detriment to Person or Property and 9.13, Emission of Air Contaminant: Concealment and Masking Requirement*

PS Clean Air is requesting that these sections be removed from the SIP. As justification for the request, the Agency states that Sections 9.11 (adopted June 9, 1983) and 9.13 (adopted June 9, 1988) are only used as tools to deal with nuisance, primarily odors. PS Clean Air further states that, because the similar provisions of WAC 173-400-040(5) and (7) are already part of the SIP, it is unnecessary to include Sections 9.11 or 9.13 in the SIP.

With reservations, EPA is granting PS Clean Air's request to remove Section 9.13 from the SIP, but is denying the request to remove Section 9.11. As an initial matter, EPA does not agree that Sections 9.11 and 9.13 apply only or primarily to nuisance and odors. There is nothing in the text of the regulations to suggest that they are so limited, and EPA believes the regulations apply equally to NAAQS pollutants, such as particulate. As part of the SIP, EPA would not attempt to enforce the provisions of Sections 9.11 and 9.13 as they apply to odors and nuisance. If, in fact, PS Clean Air intends that these sections apply only to nuisance and odors, PS Clean Air could create separate "odors" or "nuisance" provisions much like WAC 173-400-040(4), Odors, which is not included in the SIP.

It is true that WAC 173-400-040(5), Emissions detrimental to persons or property, and WAC 173-400-040(7), Concealment and masking, are very similar to the provisions of PS Clean Air Regulation I, Section 9.11 and 9.13, respectively. These WAC provisions apply Statewide and have been part of the Washington SIP for many years. To avoid confusion, we believe that PS Clean Air Sections 9.11 and 9.13 should also be included as part of the SIP because they do not, on their face, exclude NAAQS pollutants, and because they are in effect in PS Clean Air's jurisdiction. Because WAC 173-400-040(5) and WAC 173-400-040(7) will continue to apply Statewide, even if the PS Clean Air provisions are removed from the SIP, however, removing these provisions from the SIP will not decrease the stringency of the Washington SIP. For this reason, EPA, with great reluctance, is proposing to grant PSCAA's request to remove Section 9.13 from the SIP.

EPA is proposing to deny PS Clean Air's request, however, to remove Section 9.11 from the SIP. Section 6.03, Notice of Construction, which PS Clean Air is submitting as a SIP revision, refers to and relies on Section 9.11 for applicability. Section 6.03(a)(8) (adopted July 12, 2001)<sup>3</sup>, states that a minor new source review permit is required for "any stationary source previously exempted from review that is cited by the Agency for causing air pollution under Section 9.11 of this regulation." Thus, sources that are cited for violation of Section 9.11 are subject to PS Clean Air's minor new source review program, which must be submitted and approved as part of the SIP. Until Section 9.11 is no longer tied to applicability of PS Clean Air's new source review program, EPA does not believe that this provision can be removed from the SIP.

In granting PS Clean Air's request to remove Section 9.13 from the SIP, EPA emphasizes the importance of the fact that the Federally-enforceable requirements of the Washington SIP have not, in fact, been substantively changed by the removal because WAC 173-400-040(7) continues to apply to sources within PS Clean Air's jurisdiction. If, for example, Washington was seeking to remove WAC 173-400-040(5) and (7), EPA would require a showing that, consistent with CAA section 110(l), removal of these provisions did not interfere with any

<sup>3</sup> PS Clean Air has proposed to renumber this subsection to Section 6.03(a)(5) and plans on submitting the revised Section 6.03 as part of the SIP.

applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act and that, if applicable, the revision meets the requirements of CAA section 193.

*Sections 11.01, Ambient Air Quality Standards, and 11.02, Ambient Air Monitoring*

PS Clean Air is requesting that Sections 11.01 and 11.02 (adopted April 14, 1994) be removed from the SIP because they are informational only and not regulatory. Sections 11.01 and 11.02 are not referenced in any other provisions that are part of the PS Clean Air's regulations that are approved into the SIP. Therefore, EPA is proposing to grant PS Clean Air's request to remove Sections 11.01 and 11.02 from the SIP.

*Sections 12.02, Continuous Emission Monitoring Requirements, and 12.04, Recordkeeping and Reporting Requirements*

Sections 12.02, Continuous Emission Monitoring Requirements, and 12.04, Recordkeeping and Reporting Requirements (adopted August 10, 1989) were repealed by PS Clean Air's Board through Resolution No. 865 on April 9, 1998. The requirements of these provisions are included in new and revised Sections 12.01, Applicability, and Section 12.03, Continuous Emission Monitoring Systems (adopted April 9, 1998), through incorporation by reference of 40 CFR Part 60, 61, and 63. Removal of these provisions from the SIP does not make the SIP less stringent because Sections 12.01 and 12.03 are being submitted for inclusion into the SIP. Therefore, EPA is proposing to grant PS Clean Air's request to remove Sections 12.02, Continuous Emission Monitoring Requirements, and 12.04, Recordkeeping and Reporting Requirements from the SIP.

## 2. Regulation II

*Section 2.04, Volatile Organic Compound Storage Tanks*

Section 2.04, Volatile Organic Compound Storage Tanks (adopted June 13, 1991) was revised and renumbered to Regulation II, Section 3.02 Volatile Organic Compound Storage Tanks. The purpose of the revisions to this section was to reflect that the requirements for large volatile organic compound storage tanks are sometimes used for products other than petroleum (which makes this section more appropriately located in Article 3: Miscellaneous Volatile Organic Compound Emission Standards). Removing Section 2.04 from the SIP does not change the stringency

of the SIP because Section 3.02 is being submitted for inclusion into the SIP. Therefore, EPA is proposing to grant PS Clean Air's request to remove Section 2.04, Volatile Organic Compound Storage Tanks from the SIP.

*Section 3.07, Petroleum Solvent Dry Cleaning Systems*

Section 3.07, Petroleum Solvent Dry Cleaning Systems (adopted February 11, 1982) was repealed by PS Clean Air's Board through Resolution No. 914 on March 9, 2000. PS Clean Air's Board took this action because it determined that Section 3.07 was not necessary because there were no longer any sources subject to this section in their jurisdiction. There is no relaxation of the SIP because if a new facility sought operation within PS Clean Air's jurisdiction; Regulation I, Article 6, Notice of Construction would apply and insure local, State, and Federal emission requirements were met. Therefore, EPA is proposing to remove Section 3.07, Petroleum Solvent Dry Cleaning Systems from the SIP.

## 3. Regulation III

PS Clean Air is requesting removal of Regulation III, their air toxics regulations, from the SIP. The provisions of Regulation III are not related to criteria pollutants regulated under title I of the Act or to the requirements for SIPs under title I of the Act and therefore, were inappropriately approved into the SIP. Thus, EPA is proposing to grant PS Clean Air's request to remove Regulation III from the SIP.

## V. Saint Gobain Containers, NOC Order of Approval #8244

This Order was issued to Saint-Gobain Containers and will become effective on the effective date of EPA's SIP approval. The Order establishes PM10 emission limits for Glass Furnaces Nos. 2, 3, 4, and 5 combined; PM10 emissions limits from any baghouse exhaust; and details of compliance response.

### A. Background

In October 1992, EPA noted that the Puget Sound Region PM10 SIP was deficient because the plan did not contain enforceable facility-wide particulate emission limits for the industrial sources in the Seattle-Duwamish area. EPA conditionally approved the Puget Sound Region PM10 SIP on June 23, 1994 (59 FR 32370), subject to the condition that the State submit limits for these sources on a set schedule.

In December 1994, the Board of Directors of the Puget Sound Air Pollution Control Agency (now known as Puget Sound Clean Air Agency) issued regulatory orders with emission limits for major industrial sources in the Duwamish area and EPA approved these regulatory orders as part of the SIP on October 26, 1995 (60 FR 54812). Saint Gobain was one of these sources. Subsequently, Saint Gobain requested a minor revision to its facility emission limit. The requested change relates to the form of the standard and the compliance test procedure, but not the overall emission limit. PS Clean Air proposes to approve this change and has forwarded the proposal to Ecology with a request that Ecology submit the change as a revision to the SIP.

### B. Summary of Action

PS Clean Air is proposing a minor revision to Saint-Gobain's PM10 emission limits (*i.e.*, Glass Furnaces Nos. 2, 3, 4, and 5) within the facility and the test procedure for determining compliance. The revision affects the form of the standard and the compliance test procedure, but not the overall emission limit, which was established to protect the ambient PM10 standard. Emissions allowed under the order are expected to remain unchanged. Therefore, EPA is proposing to approve Saint Gobain Containers, NOC Order of Approval #8244 into the SIP.

## VI. LaFarge North America, NOC Order of Approval #5183

### A. Background

PS Clean Air issued an order to Holnam, Inc., Ideal Division, now known as LaFarge North America, Inc., on February 9, 1994, under the authority of Regulation I, Section 9.09(c) [State adopted, February 10, 1994], which has since been renumbered to Regulation I, Section 9.04(d)(2). The rule language reads as follows: "The provisions of Section 9.09(b)(2) shall not apply to any source that has obtained an Order of Approval for a Notice of Construction that correlates the particulate matter concentration with opacity such that any violation of the alternate opacity standard accurately indicates a violation of the applicable emission standard of the Section 9.09(a)." [State adopted, February 10, 1994]

LaFarge submitted to PS Clean Air an analysis showing that, at 0.05 gr/dscf, its predicted opacity was 15.02%. LaFarge's submittal also demonstrated that the change in the in stack opacity levels was not expected to have an impact on total annual or short term particulate matter emissions. Therefore,

PS Clean Air granted LaFarge an alternate opacity limit of 12% (1hr average) in NOC Order of Approval #5183, dated February 9, 1994. The Order also requires LaFarge to source test annually to verify that the 12% (1hr average) opacity standard demonstrates continuous compliance with the 0.05 gr/dscf mass emission limit of Section 9.09(a) of Regulation I [State adopted, February 10, 1994], which has since been renumbered to Regulation I, Section 9.09.

PS Clean Air is submitting NOC Order of Approval #5183, dated February 9, 1994 for inclusion into the SIP at this time.

#### B. Summary of Action

Based on LaFarge's submittal which demonstrated that the change in the in stack opacity levels was not expected to have an impact on total annual or short term particulate matter emissions, EPA is proposing to approve the LaFarge order as a source-specific SIP revision.

### VII. Geographic Scope of SIP Approval

This SIP approval does not extend to sources or activities located in Indian Country, as defined in 18 U.S.C. 1151. Consistent with previous Federal program approvals or delegations, EPA will continue to implement the Act in Indian Country in Washington because PS Clean Air did not adequately demonstrate authority over sources and activities located within the exterior boundaries of Indian reservations and other areas of Indian Country. The one exception is within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided State and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Therefore, EPA's SIP approval applies to sources and activities on non-trust lands within the 1873 Survey Area.

### VIII. General Information

#### A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office, under Docket number WA-04-002. The official public file consists of the documents specifically referenced in this action, and other information related to this action. The official public rulemaking file is available for public viewing at EPA, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle,

Washington 98101. EPA requests that, if possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. EPA's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal Holidays.

2. Copies of the State submission and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State of Washington, Department of Ecology, P.O. Box 47600, Olympia, Washington 98504-7600.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulations.gov Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

#### B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking WA-04-002" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your

comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. *E-mail.* You may send comments by electronic mail (e-mail) to [r10.aircom@epa.gov](mailto:r10.aircom@epa.gov), please including the text "Public comment on proposed rulemaking WA-04-002" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

b. *Regulations.gov.* You may use Regulations.gov as an alternative method to submit electronic comments to EPA. Go directly to Regulations.gov at <http://www.regulations.gov>, then select Environmental Protection Agency at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

c. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Roylene A. Cunningham, EPA, Office of Air Quality, (OAQ-107), 1200 Sixth Avenue, Seattle, Washington 98101. Please include the text "Public comment on proposed rulemaking WA-04-002" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Roylene A.

Cunningham, EPA, Office of Air Quality, (OAQ-107), 1200 Sixth Avenue, Seattle, Washington 98101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

#### *C. How Should I Submit CBI To the EPA?*

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA to be CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). EPA will not disclose information so marked except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

#### **IX. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does

not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 24, 2004.

**L. John Iani,**

*Regional Administrator, Region 10.*

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#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Parts 52 and 81**

[PA209-4301; FRL-7642-5]

#### **Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Hazelwood SO<sub>2</sub> Nonattainment and the Monongahela River Valley Unclassifiable Areas to Attainment and Approval of the Maintenance Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These SIP revisions include a regulation change to the allowable sulfur oxide emission limits for fuel burning equipment and a modeled demonstration of attainment of the national ambient air quality standards (NAAQS) for sulfur dioxide (SO<sub>2</sub>) in the Hazelwood nonattainment area and the Monongahela River Valley unclassifiable area located in the Allegheny Air Basin in Allegheny County, Pennsylvania. In addition, EPA is proposing to redesignate these areas to attainment of the NAAQS for SO<sub>2</sub> and to approve a combined maintenance plan for both areas as a SIP revision. These SIP revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Allegheny County Health Department (ACHD). This action is being taken in accordance with the Clean Air Act (CAA).

**DATES:** Comments must be received on or before May 3, 2004.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov) or to <http://www.regulations.gov>, which is an alternative method for submitting