

**§ 100.718 Annual Suncoast Kilo Run; Sarasota Bay, Sarasota, FL.**

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(d) *Dates:* This section becomes effective at 8 a.m. and terminates at 1 p.m. EDT on June 30, 2000.

Dated: April 7, 2000.

**G.W. Sutton,**

*Captain U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[Region VII Tracking No. MO 098-1098b; FRL-6583-4]

**Approval and Promulgation of Implementation Plans; State of Missouri**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve the Eagle-Picher Technologies' LLC Consent Agreement as a revision to the Missouri State Implementation Plan (SIP). This Consent Agreement ensures that the operation of their newly installed emissions controls at the Chemicals Divisions in Joplin, Missouri, are permanent, enforceable, and measurable.

**DATES:** This rule is effective on June 23, 2000 without further notice, unless EPA receives adverse written comment by May 24, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to Kim Johnson, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the state submittal(s) are available at the following address for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Kim Johnson at (913) 551-7975.

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever "we, us, or our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is being addressed in this document?

Have the requirements for approval of a SIP revision been met?

What action is EPA taking?

**What Is a SIP?**

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards (NAAQS) established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

**What Is the Federal Approval Process for a SIP?**

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to EPA for inclusion into the SIP. EPA must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by EPA.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR

outright but are "incorporated by reference," which means that EPA has approved a given state regulation with a specific effective date.

**What Does Federal Approval of a State Regulation Mean to Me?**

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, EPA is authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

**What Is Being Addressed in This Document?**

In 1995, the Missouri Department of Natural Resources (MDNR) and EPA initiated a review of small lead sources with the potential to emit five tons of lead per year or more. The purpose of this review is to determine whether or not the sources have the potential to cause or contribute to violations of the lead NAAQS of 1.5 µg/m<sup>3</sup>. The first review consisted of an emissions inventory review and preliminary screening modeling.

Preliminary modeling of the emissions at Eagle-Picher, Chemicals Division in Joplin, Missouri, predicted ambient air lead values near this facility which exceeded the NAAQS for lead of 1.5 µg/m<sup>3</sup>.

As a result of this modeling, the state of Missouri planned to place an ambient air lead monitor in the area. In order to effectively locate a monitor, additional information was needed for a more refined modeling analysis.

On March 25, 1998, EPA issued an order under section 114 of the CAA requesting additional facility information and stack testing of three of the facility's major emissions points. These three points accounted for 71 percent of the lead emissions from the facility.

Shortly after the 114 Order was issued, Eagle-Picher informed EPA and MDNR that as a result of an internal environmental review, they planned to install controls in August 1998, on the Basic Silicate White Lead (BSWL) scrubber drier exhaust, their most significant lead source which contributed almost 60 percent of the lead emissions from this facility.

Eagle-Picher agreed to enter into a Consent Agreement with the state of Missouri to ensure these controls are permanent, enforceable, and measurable. This Consent Agreement defines control specifications, operation parameters, and testing and reporting requirements for the BSWL baghouse at

the Eagle-Picher facility in Joplin, Missouri. The operation of this baghouse reduces lead emissions from the most significant lead source at the facility by 99.85 percent or an equivalent decrease of 2.8 tons/year.

#### **Have the Requirements for Approval of a SIP Revision Been Met?**

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

#### **What Action Is EPA Taking?**

EPA is processing this action as a direct final action because the Consent Agreement affects only one source and does not appear to be controversial; therefore, we do not anticipate any adverse comments.

#### **Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves preexisting 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 (Public Law 104-4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This 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 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (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 CAA. 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 CAA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and

rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of nonagency parties. 5 U.S.C. 804(3). The EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 23, 2000. 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, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 6, 2000.

**Dennis Grams,**

*Regional Administrator, Region 7.*

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 *et seq.*

#### **Subpart AA—Missouri**

2. Section 52.1320 is amended in paragraph (d), table titled EPA-APPROVED MISSOURI SOURCE SPECIFIC PERMITS AND ORDERS, to add the following entry at the end of the table:

#### **§ 52.1320 Identification of plan.**

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## (D) EPA-APPROVED MISSOURI SOURCE SPECIFIC PERMITS AND ORDERS

Name of source	Order/permit number	State effective date	EPA approval date	Explanation
Eagle-Picher Technologies Joplin, MO .....	Consent Agreement.	08/26/99	4/24/00 65 FR 21651	

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[SW-FRL-6583-6]

### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is granting a petition submitted by DuraTherm, Inc., (DuraTherm) to exclude from hazardous waste control (or delist) a certain solid waste. This action responds to the petition submitted by DuraTherm to delist the desorber solids on a "generator specific" basis from the lists of hazardous waste.

After careful analysis, the EPA has concluded that the petitioned waste is not hazardous waste when disposed of in subtitle D landfills. This exclusion applies to desorber solids generated at DuraTherm's San Leon, Texas, facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in subtitle D landfills but imposes testing conditions to ensure that the future-generated wastes remain qualified for delisting.

**EFFECTIVE DATE:** April 24, 2000.

**ADDRESSES:** The public docket for this final rule is located at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Freedom of Information Act review room on the 7th floor from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665-6444 for appointments. The reference number for this docket is "F-99-TXDEL-DURATHERM." The public may copy material from any regulatory docket at

no cost for the first 100 pages and at a cost of \$0.15 per page for additional copies.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact Bill Gallagher, at (214) 665-6775. For technical information concerning this document, contact Michelle Peace, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, (214) 665-7430.

**SUPPLEMENTARY INFORMATION:** The information in this section is organized as follows:

- I. Overview Information
  - A. What action is EPA finalizing?
  - B. Why is EPA approving this delisting?
  - C. What are the limits of this exclusion?
  - D. How will DuraTherm manage the waste if it is delisted?
  - E. When is the final delisting exclusion effective?
  - F. How does this action affect states?
- II. Background
  - A. What is a delisting?
  - B. What regulations allow facilities to delist a waste?
  - C. What information must the generator supply?
- III. EPA's Evaluation of the Waste Data
  - A. What wastes did DuraTherm petition EPA to delist?
  - B. How much wastes did DuraTherm propose to delist?
  - C. How did DuraTherm sample and analyze the waste data in this petition?
- IV. Public Comments Received on the Proposed Exclusion
  - A. Who submitted comments on the proposed rule?
  - B. How will DuraTherm segregate the petitioned waste from the other wastes accepted and processed in the thermal desorption unit?
  - C. Why is EPA applying the Land Disposal Restrictions to the petitioned wastes?
- V. Regulatory Impact
- VI. Regulatory Flexibility Act
- VII. Paperwork Reduction Act
- VIII. Unfunded Mandates Reform Act
- IX. Congressional Review Act
- X. Executive Order 12875
- XI. Executive Order 13045
- XII. Executive Order 13084
- XIII. National Technology Transfer and Advancements Act
- XIV. Executive Order 13132 Federalism

#### I. Overview Information

##### A. What Action Is EPA Finalizing?

The EPA is finalizing:

(1) the decision to grant DuraTherm's petition to have their desorber solids excluded, or delisted, from the definition of a hazardous waste; and  
(2) the use of the EPA Composite Model for Landfills as the fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste once it is disposed.

After evaluating the petition, EPA proposed, on August 18, 1999 to exclude the DuraTherm waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 64 FR 44866).

##### B. Why Is EPA Approving This Delisting?

DuraTherm petitioned to exclude the desorber solids because it does not believe that the petitioned waste meets the criteria for which it was listed.

DuraTherm also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)-(4).

For reasons stated in both the proposal and this document, EPA believes that DuraTherm's desorber solids should be excluded from hazardous waste control. The EPA therefore is granting a final exclusion to DuraTherm, located in San Leon, Texas, for its Desorber Solids.

##### C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in Table 1 of part 261 and the conditions contained herein are satisfied. The maximum annual volume of the Desorber Solids is 20,000 cubic yards.

##### D. How Will DuraTherm Manage the Waste if It Is Delisted?

The Desorber Solids is currently disposed of in an off-site hazardous