[FR Doc. 00–12387 Filed 5–17–00; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 103–1103; FRL–6701–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving Missouri's 15% Rate-of-Progress Plan (ROPP), and Missouri rule 10–CSR 10–5.300, ''Control of Emissions From Solvent Metal Cleaning.'' This Plan is intended to fulfill the requirements of section 182(b)(1)(A) of the Clean Air Act (CAA or Act).

DATES: This rule is effective on June 19, 2000.

ADDRESSES: Copies of the state submittals 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: Royan Teter at (913) 551–7609.

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?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards 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 us for inclusion into the SIP. We 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 us.

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 we have 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, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

On November 12, 1999, Missouri submitted a revised ROPP. The plan established the 1996 target level of volatile organic compound (VOC) emissions for the Missouri portion of the St. Louis ozone nonattainment area. Missouri achieves the required reductions through a combination of 19 state and 9 Federal measures.

On February 17, 2000, (65 FR 8083) EPA proposed to approve Missouri's ROPP and VOC rule 10 CSR 10–10.300. The public provided comments on the proposed action. We are responding to those comments below.

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 was part of the proposed action, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

Response to Comments

The Missouri Coalition for the Environment and the Sierra Club submitted jointly written comments regarding our February 17, 2000 proposal (65 FR 8083) to approve Missouri's 15% ROPP, and Missouri rule 10–CSR 10–5.300, ''Control of Emissions From Solvent Metal Cleaning.'' Their paraphrased comments and EPA's responses follow.

1. Comments Relating to the Statutory Requirements for Review of the ROPP

Comment: The commenters stated that the ROPP should be disapproved because it fails to show reasonable further progress ''as a matter of law.'' The commenters argue that the St. Louis nonattainment area is currently classified as ''serious'' under section 181 of the Act, and is therefore subject to the reasonable further progress (RFP) requirements of section 182(c) rather than 182(b).

In addition, they argue section 182(b) is no longer relevant for purposes of determining RFP because it governs RFP toward the goal of attainment by 1996 whereas it is now 2000. They contend the plan should be disapproved based on the premise that section 182(c) is the applicable CAA requirement and their conclusion that Missouri's plan does not purport to satisfy the RFP requirements of section 182(c).

Response: The St. Louis area is classified under section 181(a) of the Act as a moderate ozone nonattainment area, and has not been reclassified under section 181(b) as suggested by the commenters. In any event, the RFP requirements of section 182(b)(1) are applicable to all areas classified as

moderate or higher, and must be met regardless of an area's classification and attainment date.

The RFP requirements of the CAA are structured in an additive fashion. For example, section 182(c) states that serious areas must meet the requirements of both subsections (b) and (c). As stated in the proposal on Missouri's submission, the scope of this rulemaking is limited to determining whether the submission meets the RFP requirements in section 182(b)(1). Whether it also meets additional requirements of the Act, even if such requirements were relevant, is beyond the scope of the rulemaking.

2. Comments on the Adequacy of EPA's Notice of Its Statutory Authority for the Rule

Comment: The commenters argue that EPA failed to give notice of its statutory authority to approve a 15% Plan which relies on reductions in VOC emissions achieved after November 15, 1996 (the date specified in section 182(b)(1)(A)(i) for achieving the reductions). The commenters state that EPA has not met the notice requirements of section 307(d)(3)(C) of the Act, or section 553 of the Administrative Procedure Act (APA).

Response: As a preliminary matter, EPA notes that section 307(d) is not applicable to this rulemaking. Section 307(d)(1) lists the actions to which section 307(d) applies, and the list does not include approval of SIP submissions. *See, e.g., Missouri Limestone Producers* v. *Browner,* 165 F. 3d 619, 621 (8th Cir. 1999). Therefore, the rulemaking is governed by the provisions of section 553 of the APA, which requires, in relevant part, that a notice of proposed rulemaking include ''reference to the legal authority'' for the proposed rule, and ''a description of the subjects and issues involved'' in the proposed rule. APA, section 553(b). In general, the notice must be sufficient to allow for ''informed public comment.'' *Id.* at 623.

EPA believes that the notice criteria in section 553(b) were met in the notice of proposed rulemaking on the ROPP. The notice contained a description of the statutory requirements in section 182(b)(1) of the Act against which submission was evaluated and a description of how the submission meets those requirements. The notice contains a description of the issues involving the November 15, 1996 deadline, and a discussion of the rationale for approving a ROPP extending beyond that date. See 65 FR 8089–8091.

EPA notes that the commenters submitted extensive comments which took issue with EPA's stated legal basis for proposing to approve the ROPP. Therefore, EPA believes that the notice of proposed rulemaking provided sufficient notice to allow for ''informed public comment'' and to satisfy the requirements of the APA. The fact that the commenters disagree with EPA's basis for approval, to which EPA is responding below, does not mean that EPA failed to provide adequate notice of the basis for the proposed approval.

3. Comments Relating to the ROPP's Sufficiency With Respect to the Statutory Requirements

Comment: In general, the commenters assert that since section 182(b)(1) requires that the plan include a 15% decrease in baseline emissions by November 15, 1996, EPA cannot approve a plan which includes reductions occurring after 1996.

Response: This assertion is contrary to relevant case law and would provide a disincentive for states to continue to achieve emission reductions in an area once a statutory date is missed, thus defeating the purpose of section 182(b)(1). As EPA explained in the proposal, even after the November 15, 1996 deadline for demonstrating the 15% VOC reduction has passed, the requirement to achieve the emission reduction remains, and the reduction must be demonstrated as soon as practicable. This is based on the ruling in *Delaney* v. *EPA,* 898 F. 2d 687, 691 (9th Cir. 1990), stating that once a statutory deadline has passed and has not been replaced by a later one, the deadline then becomes as soon as possible, which EPA has interpreted to be as soon as practicable. The Missouri submission indicates, and EPA agrees, that this date is 2003, when the full reductions from the second phase of Missouri's motor vehicle inspection and maintenance program will be realized. As indicated in EPA's proposal, neither Missouri nor EPA has been able to identify any practicable measures which are not included in the plan and which could accelerate this demonstration date.

EPA also notes that the commenters do not take issue with the analysis of other measures, but only with the determination that a plan with a demonstration date after 1996 can be approved. For the reasons stated above and in the proposal, EPA believes that the Missouri submission can be approved even though the demonstration date is after 1996.

EPA also notes that, under the commenters' view that a 15% ROPP with a post-1996 demonstration date cannot be approved, there would be a disincentive for a state to adopt and implement a plan for achieving the 15% ROPP reductions, since EPA would be required to disapprove any post-1996 plan submitted by a state. In addition, EPA would be unable to promulgate a Federal plan after 1996, since it would also be unable to achieve emission reductions by 1996. EPA's approach keeps the requirement for emission reductions in place after 1996, and ensures that the reductions will be achieved as soon as practicable after that date.

Comment: Referring to language in section 182(b)(1)(A) of the CAA the commenters assert that Missouri's ROPP falls short of achieving the required VOC emissions reductions. They note that Missouri's plan only accounts for emissions growth between 1990 and 1996 and contend that the plan should also account for growth that occurred between 1996 and the time the state's plan was submitted. They further contend that Missouri's use of 1996 emissions projections (developed by applying economic growth factors to emissions estimates from previous years), is arbitrary and capricious for two reasons: (1) Their belief that there is no basis for relying on emissions projections at this late date, asserting that 1996 actual emissions should be inventories instead; and (2) the ROPP does not account for growth after 1996.

Response: Section 182(b)(1)(A)(i) reads, ''By no later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990, the state shall submit a revision to the applicable implementation plan to provide for volatile organic compound emission reductions within 6 years after the enactment of the Clean Air Act Amendments of 1990, of at least 15 percent from baseline emissions accounting for any growth in emissions after the year in which the Clean Air Act Amendments are enacted.'' As acknowledged by the commenters, the statute clearly contemplated that states would submit their ROPP by 1993 and implement them by 1996. The growth for which they must account is clearly tied to 1996.

The 1993 due date leads to a reasonable conclusion that Congress intended for the states to determine the required level of emissions reductions based on *projected* as opposed to actual emissions. Such an approach provides for equitable treatment of the states. It ensures there is no advantage gained from delayed implementation of emission control measures until after the compliance date has passed and

actual emissions can be estimated, rather than risk implementing a control plan designed around emission projections that are too high.

Though not directly relevant to this rulemaking, but nonetheless important to achieving the air quality standards, EPA notes that neither Missouri nor EPA intends to ignore post-1996 changes in the area's emissions inventory. Appropriate consideration of such changes is paramount to ensuring that ozone levels in the St. Louis area are reduced to acceptable levels. Missouri has accounted for such changes in its attainment demonstration upon which EPA proposed action on April 17, 2000 (65 FR 20404).

Comment: The commenters stated that, even if a plan could be submitted after the statutory deadline for achieving the 15% reductions, most of the reductions included in the Missouri submission are not creditable because they did not occur prior to November 15, 1996.

Response: As stated previously, once the statutory deadline for demonstrating the 15% ROPP reductions has passed, the requirement remains in effect, and the new deadline is a date which is as expeditious as practicable. Similarly, ROPP reductions are creditable if the state shows that the reduction will occur by the new ROPP demonstration date. Because Missouri has shown that the remaining reductions will occur by the 2003 demonstration date, EPA believes that the reductions are creditable under section 182(b)(1).

4. Comments Relating to the Absence of Contingency Measures in the 15% Plan

Comment: The commenters argue that Missouri's submission should not be approved because it does not include ''any specific contingency measures,'' and EPA's proposal makes no reference to the contingency measures to be approved as part of the 15% ROPP. The commenters assert that section 172(c)(9) of the Act requires that contingency measures meeting the requirements of that section must be included in any ROPP, and that failure to do so must result in disapproval of the plan. The commenters argue that this view linking the requirements of section 172(c)(9) with the requirements for ROPP was announced as an EPA interpretation of section 172(c)(9) in the April 16, 1992, General Preamble (57 FR 13,498).

Response: EPA does not agree that the contingency measure requirement in section 172(c)(9) must be met in order to meet the requirements for an approvable 15% ROPP. The Act requires contingency measures as part of the overall SIP and not as feature of each component of that plan, such as the 15% ROPP. Contrary to the commenters' contention, our position is supported by the plain language of section 172(c)(9). While the other subsections in section 172(c) begin with ''such plan provisions shall * * * ,'' section 172(c)(9) begins with ''such plan shall * * *.'' ''Such plan'' refers to the overall nonattainment plan rather than an individual element or provision of it. The difference in language between the contingency measures requirement and the other requirement in section 172(c) emphasizes that the contingency measures serve to backstop the entire nonattainment plan and not just particular elements of it.

This interpretation is consistent with the statement in the General Preamble cited by the commenters which, contrary to their characterization, did not state that contingency measures must be included in the ROPP. In the General Preamble, EPA stated the Act's requirements for nonattainment plan submittals for moderate nonattainment areas. these included the requirement for a 15% ROPP (discussed in section III.A.3.(a)), an attainment demonstration (discussed in section III.A.3.(b)), and contingency measures (discussed in section III.A.3.(c)), see 57 FR 13,498, 13507–13,512, as well as other requirements for moderate areas.

EPA stated that it expected the contingency measures would be submitted at the same time as these other plan elements, but did not state that the 15% ROPP or any other specific submittals were required to include contingency measures. Logically, had EPA intended to assert that contingency measures are required in 15% Plans, it would have said so in the General Preamble discussion of the requirements for 15% ROPP (section III.A.3.(a)), which contained a lengthy discussion of the contents of 15% Plans.

The commenters correctly note that EPA's proposal did not address the issue of whether the various VOC rule submittals, including rule 10 CSR 10–5.300 (which EPA proposed to approve into the SIP in the February 17, 2000, proposed rulemaking), were adequate to meet the contingency measure requirements of section 172(c)(9). The issue was not addressed because the proposal related only to whether Missouri met the 15% ROPP requirements in section 182(b)(1).

In the proposal (65 FR 8083, 8088), EPA noted that rule 10–5.300 had been submitted as part of the state's 1998 contingency measure SIP, and that a small fraction of the VOC reductions (0.64 tons per day out of an approximate total of 9 tons per day) was included in the state's 15% Plan demonstration. EPA has not determined whether the 1998 submittal meets the requirements of section 172(c)(9), and, as explained above, can approve Missouri's ROPP demonstration without making that determination. EPA will address the SIP's adequacy with respect to contingency measures in a separate rulemaking.

5. Comments Relating to EPA's Authority to Engage in Retroactive Rulemaking

Comment: Finally, the commenters object to EPA's proposed action as ''retroactive'' rulemaking which is not authorized under the Act. This comment is based on their assertion that EPA is proposing ''to give legal effect as of 1996 to events potentially occurring in 2000 and beyond.''

Response: This comment is based on an incorrect characterization of EPA's proposal. Although not stated, this comment appears to be based on the commenters' view, addressed above, that EPA cannot approve a 15% ROPP which relies on reductions occurring after 1996, and that to approve such a plan we are making it ''retroactive'' to 1996. However, this is not what EPA has done. Rather, EPA has explained the legal and policy basis for approving a ROPP demonstration which extends beyond 1966.

In addition, EPA's approval of the state plan does not take effect until the future effective date specified in this notice, and EPA's approval of the plan does not alter the effective dates (which were established by Missouri during its rulemaking process) of the rules on which the plan relies. For these reasons, EPA is not engaged in ''retroactive'' rulemaking and is authorized under the Act to take this final action.

What Action Is EPA Taking?

We are taking final action to approve Missouri's 15% ROPP for the St. Louis area and VOC rule 10 CSR 10–5.300. In separate actions published in today's **Federal Register**, we are approving several other VOC regulations which are elements of the ROPP.

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, our 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), we have 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 requirement 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, we have 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. section 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. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this section must be filed in the United States Court of Appeals for the appropriate circuit by July 17, 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 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: May 8, 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. In § 52.1320, the table in paragraph (c) is amended by revising the entry for 10–5.300, under Chapter 5, to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA–APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	DPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 5—Air Quality Standards and Pollution Control Regulations for the St. Louis Metropolitan Area				
*	*	*	*	*
10–5.300	Control of Emissions From Solvent Metal Cleaning.	May 30, 1998	May 18, 2000.	
*	*	*	*	*

3. In § 52.1320, the table in paragraph (e) is amended by adding the following entry at the end of the table: ''15% Rate-of-Progress Plan.''

§ 52.1320 Identification of plan.

* * * * *

(e) * * *

EPA–APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State Submittal date	EPA approval date	Explanation
*	*	*	*	*
15% Rate-of-Progress Plan.	St. Louis	11/12/99	May 18, 2000	

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 7 Tracking No. MO 101–1101; FRL–6701–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a set of volatile organic compound (VOC) rules for the St. Louis, Missouri, nonattainment area. These rules are intended to satisfy the reasonably available control technology (RACT) requirements of section 182(b)(2) of the Clean Air Act (Act) Amendments of 1990. The VOC reductions achieved by the implementation of these rules will be accounted for in the 15% Rate-of-Progress Plan (ROPP) and the attainment demonstration for the St. Louis nonattainment area as required in section 182(b)(1)(A) of the Act. EPA is addressing the reductions as part of the 15% ROPP and the attainment demonstration in separate rulemaking actions.

DATES: This rule is effective on June 19, 2000.

ADDRESSES: Copies of the state submittals 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:

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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.

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Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We 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 us.

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What Is Being Addressed in This Document?

VOC emissions combine with nitrogen oxide emissions on hot, sunny days to form ground level ozone, commonly known as smog. The purpose of the following rules is to establish RACT requirements for major sources of VOC emissions to help reduce ozone concentrations in the St. Louis ozone nonattainment area. The St. Louis ozone nonattainment area includes Franklin, Jefferson, St. Charles, and St. Louis counties, and St. Louis City in Missouri.

We are taking final action to approve as an amendment to the Missouri SIP the following rules:

10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading, and Transfer

Missouri has updated its existing rule 10 CSR 10–5.220 to improve the clarity of the regulation and generally strengthen the SIP. This rule restricts VOC emissions from the handling of petroleum liquids in five specific areas.