

promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From February 24, 2003 through April 14, 2003, in § 117.795, paragraph (b) is temporarily suspended, and a new temporary paragraph (d) is added, to read as follows:

#### § 117.795 Jamaica Bay and Connecting Waterways.

\* \* \* \* \*

(d) The draw of the New York City highway bridge, mile 0.8, across Mill Basin on Belt Parkway, need not open for the passage of vessel traffic from 7 a.m. on February 24, 2003 through 5 p.m. on April 14, 2003.

Dated: February 10, 2003.

**John L. Grenier,**

*Captain, Coast Guard, Acting Commander, First Coast Guard District.*

[FR Doc. 03–4761 Filed 2–28–03; 8:45 am]

BILLING CODE 4910–15–P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[IN 140–2; FRL–7457–8]

#### Conditional Approval of Implementation Plan; Indiana; Withdrawal of Direct Final Rule

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

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to adverse comments, the EPA is withdrawing the direct final rule which conditionally approved the revisions to Indiana's State Implementation Plan for the Prevention of Significant Deterioration provisions for attainment areas. In the direct final

rule published on January 15, 2003 (68 FR 1970), EPA stated that if EPA receives adverse comments by February 14, 2003, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments, and will address these comments in a subsequent final action based upon the proposed action also published on January 15, 2003 (68 FR 1970). EPA will not institute a second comment period on this action.

**EFFECTIVE DATE:** This direct final rule is withdrawn as of March 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Julie Capasso, Environmental Scientist, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–1426.

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxide, Volatile organic compounds.

Dated: February 19, 2003.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

#### PART 52—[AMENDED]

Accordingly, the addition of 40 CFR 52.770 (c)(147) is withdrawn as of March 3, 2003.

[FR Doc. 03–5023 Filed 2–28–03; 8:45 am]

BILLING CODE 6560–50–P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[IN 140–3; FRL–7457–3]

#### Conditional Approval of Implementation Plan; Indiana

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

**ACTION:** Final rule.

**SUMMARY:** The Indiana Department of Environmental Management (IDEM) has submitted to EPA requested revisions to its Prevention of Significant Deterioration (PSD) State Implementation Plan (SIP). Due to the receipt of adverse comments, EPA is withdrawing its January 15, 2003 direct final action, which conditionally approved the state's submission. In this action, EPA responds to the public

comments received, and takes final action to conditionally approve Indiana's PSD provisions.

**DATES:** This rule is effective on April 2, 2003.

**ADDRESSES:** Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Permits and Grants Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Please contact Julie Capasso at (312) 886–1426 before visiting the Region 5 office. Written comments should be sent to: Pamela Blakley, Chief, Permits and Grants Section (IL/IN/OH), Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Julie Capasso, Environmental Scientist, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–1426.

**SUPPLEMENTARY INFORMATION:** This supplementary information section is organized as follows:

- A. What is the background of this action?
- B. What comments did EPA receive and what are EPA's responses?
- C. What action is EPA taking today?
- D. Statutory and Executive Order Reviews

#### A. What Is the Background of This Action?

EPA is approving revisions to Indiana's SIP for PSD. IDEM submitted these revisions to EPA on February 1, 2002, following an informal review by EPA in which a number of issues were identified and resolved by the two agencies. On January 15, 2003, EPA published a direct final rule conditionally approving these revisions (68 FR 1970). On the same date, EPA also proposed to approve the revisions (68 FR 1998). In a separate action, we withdrew the direct final rule because we received adverse comments. The proposed approval remained in effect. Today we are responding to those comments and taking final action to conditionally approve Indiana's SIP revision request.

In our January 15, 2003 direct final rulemaking, we discussed the history of Indiana's PSD program, the contents of the State's submission and our analysis. Please consult that document for further information on those matters.

On December 31, 2002, EPA published revisions to its New Source

Review (NSR) regulations, including PSD (67 FR 80186). These revisions, which do not take effect until March 3, 2003, will change existing NSR requirements in a number of ways. States which have approved programs under 40 CFR part 51 (as Indiana now has as a result of today's action), will have up to three years in which to adopt and submit revisions implementing the new requirements.

#### **B. What Comments Did EPA Receive and What Are EPA's Responses?**

EPA received the comments described below from a number of parties, including corporations, trade associations and private citizens.

*Comment:* The proposed SIP does not comport with current EPA requirements because it does not incorporate the alternative fuel/raw material exemption of 40 CFR 51.166(b)(2)(iii)(e). The commenter contends that this omission is significant because it means that Indiana's rule fails to provide an exemption for "certain anticipated operational fluctuations, thereby potentially triggering [NSR] in Indiana for otherwise federally exempt minor modifications."

*Response:* As noted in EPA's January 15, 2003 direct final rulemaking notice, this provision may inadvertently allow changes prohibited in a previously-issued minor construction permit to qualify for the alternative fuel/raw material exemption. Indiana's regulatory language does not prevent minor sources from applying this provision when appropriate to avoid PSD applicability. As EPA also previously noted, Indiana has agreed to address this inadvertent omission within one year of the effective date of approval (68 FR 1971). EPA does not believe that this minor, inadvertent omission warrants the disapproval of the rules.

*Comment:* Indiana's rule fails to address "pollution control projects."

*Response:* Currently, federal PSD regulations provide an exemption only for pollution control projects installed at electric utility steam generating units. As a result, Indiana did not submit to EPA for approval of its provision extending the exemption to non-utility sources; and EPA, therefore, could not take any action on the State's provision.

*Comment:* The Indiana regulations include a definition of "pollution control project." In addition, Indiana regulations omit the word "utility" from the term "electric utility steam generating unit" in the pollution control project exclusion portion of the definition of "major modification" in 326 IAC 2-2-1(x)(2)(H).

*Response:* As stated above, IDEM did not submit its pollution control project provision to EPA. Therefore, this definition is merely extraneous. In addition, any comments relative to this provision are not relevant.

*Comment:* IDEM's Office of Environmental Adjudication (OEA) does not provide the same amount of time to file an appeal of a PSD determination as does EPA's Environmental Appeals Board under 40 CFR 124.19. In addition, if an appellant sought to stop construction of a facility, the OEA would require the posting of an appeal bond, something not required under the federal procedures in 40 CFR part 124.

*Response:* After communications with IDEM's Office of Legal Counsel, it is EPA's understanding that, although there is no provision for an extension of the 15-day filing period, a party may amend and supplement its timely petition for review after filing. EPA also understands that, under Indiana law, a party appealing a PSD permit to the OEA may request a stay of that permit, and that no appeal bond is required.

*Comment:* 326 IAC 2-1.1-6(a)(5) is written as if a public hearing is optional. The Indiana regulations do not meet or exceed the requirements of 40 CFR 51.166(q)(2)(iii) and do not provide informed public participation in accordance with congressional intent. There appears to be no provision under the Indiana PSD rules for the extension of comment time (see 40 CFR 124.13).

*Response:* With respect to public participation, Indiana's rules conform with applicable EPA regulations at 40 CFR 51.166. In addition, under Indiana Code 4-21.5, IDEM must individually notify potentially affected parties (which include all commentors) of its final decision. Historically, IDEM's practice has been to go beyond the minimum legal requirements by providing internet postings of applications received, permits subject to public notice and permits issued. IDEM also directly notifies potentially affected parties, which would include previous commentors and contiguous landowners. Also, IDEM has historically granted additional public comment time when it deems it necessary. 40 CFR 124.13 does not mandate that the permitting authority automatically grant additional public comment time upon any request. As a result of the above, EPA does not believe that any procedural differences which may exist between the state and federal programs warrant disapproval.

*Comment:* There is nothing in 40 CFR part 52, as it is now or as amended by this final approval, stating that Indiana is or would be an approved State to

issue PSD permits. EPA has not amended 40 CFR 52.793, which incorporated the federal PSD rules into Indiana's SIP.

*Response:* Our final action amends the SIP at 40 CFR 52.770(c)(147) to incorporate the Indiana PSD rules into the SIP.

This amendment approves the Indiana PSD program as part of the SIP, thus giving Indiana the authority to issue PSD permits under its own regulations. Our approval of the SIP, therefore, supercedes 40 CFR 52.793.

*Comment:* Indiana omitted the word "national" from the term "ambient air quality standards" in 326 IAC 2-2-5(a)(1), so as to be able to invoke 326 IAC 1-3 rather than 40 CFR part 50, the national ambient air quality standards.

*Response:* Indiana has incorporated the national ambient air quality standards from 40 CFR part 50 into 326 IAC 1-3. The omission of the word "national" has no bearing on the approvability of 326 2-2-5(a)(1).

*Comment:* Indiana regulations have no text resembling 40 CFR 50.10 and 40 CFR part 51, Appendix I, the revised 8-hour ozone standard.

*Response:* States are not currently required to address the revised ozone standard in their PSD SIPs.

*Comment:* A number of commentors asserted that EPA should not approve Indiana's current PSD program, but instead rely on the PSD/NSR rules published in the **Federal Register** on December 31, 2002. They further claimed that failure to do so would: (1) Put both the State and Indiana sources at a disadvantage; (2) subject Indiana sources to conflicting PSD obligations; (3) preclude Indiana sources from "tak[ing] advantage of the improvements" under the December 31, 2002 rules, including provisions for "plant-wide applicability limits" and "clean units;" and (4) delay implementation of new rules by three years. One commentor also noted that this makes EPA's conditional approval of Indiana's PSD program problematic because the Indiana regulations must be compared to the 2002 revisions to the Federal NSR rules when the conditional approval issue is corrected and submitted to EPA for approval.

*Response:* On September 11, 1980, EPA delegated to IDEM the authority to implement and enforce the Federal PSD program. Since that time, Indiana has devoted considerable time and energy to develop its own regulations, for approval by EPA and incorporation into Indiana's SIP. For the reasons provided in EPA's January 15, 2003 direct final rulemaking and in today's action, EPA believes that Indiana's revisions are

approvable under the currently effective regulations at 40 CFR 51.166; and that EPA, in fact, has no choice but to approve them.

The state rules EPA is approving today are now effective as a matter of Federal and state law, providing clarity and certainty to subject Indiana sources. Once the 2002 revisions to the Federal NSR rules become effective, Indiana will then have the opportunity—if it so desires—of revising its rules and submitting them for Federal approval into the SIP. More specifically, Indiana will have up to January 2, 2006 in which to review and analyze the new Federal rules, and then determine whether to adopt and submit the same rules, or “customize” its program with “different but equivalent regulations” (67 FR 80241).

With regard to the impact of NSR revisions on the “conditional” nature of this approval, EPA notes that there is actually only one provision at issue: Indiana’s omission of rule language that would specifically exclude changes prohibited in a previously-issued minor construction permits from the alternative fuel/raw material exemption under the definition of “major modification.” In response to the commentor’s question as to how EPA could fully approve Indiana’s program once revised Federal NSR rules are in effect, EPA notes that the revised Federal NSR rules to which the commentor refers actually adopt the same approach with regard to the applicable definition, *i.e.*, that provision would not be revised. Furthermore, and given the uncertainty as to what the applicable Federal requirements may be in one year, disapproval of Indiana’s submission because of such a minor omission is not warranted.

*Comment:* Once comments have been addressed, EPA should provide an additional opportunity for public input.

*Response:* The Administrative Procedure Act guarantees opportunities for public review and comment in the SIP approval process, and we make every effort to provide opportunity for meaningful and extensive public participation. For this action, we provided a public comment period from January 15, 2003, to February 14, 2003. Once the public has commented, we must respond to issues raised, reach a final decision, and take action. Since we are responding to all comments we received regarding the SIP approval of the Indiana PSD program and we have determined that the commentors have not raised any issues warranting disapproval, we must take final action.

*Comment:* Indiana has issued a permit which does not conform with the applicable requirements.

*Response:* This comment is not relevant to today’s action.

We also received comments regarding the experience and background of the OEA judges which are not relevant to the approvability of the Indiana PSD regulations. Therefore, we are not responding to those comments in this action. In addition, a commentor requested, as a response to comments, information on previous instances of PSD injunctive relief and information on work hours invested by EPA regarding the Indiana PSD regulations. These requests are not relevant to the approvability of the Indiana PSD regulations and we are not responding to these requests in this action. Requests for information from EPA should be made using the appropriate Freedom of Information Act procedures.

### C. What Action Is EPA Taking Today?

EPA is conditionally approving the following rules as part of Indiana’s SIP: 326 IAC 2–2–1, Definitions; 326 IAC 2–2–2, Applicability; 326 IAC 2–2–3, Control technology; 326 IAC 2–2–4, Air quality analysis; 326 IAC 2–2–5, Air quality impact; 326 IAC 2–2–6, Increment consumption requirements; 326 IAC 2–2–7, Additional analysis; 326 IAC 2–2–8, Source obligation; 326 IAC 2–2–9, Innovative control technology; 326 IAC 2–2–10, Source information; 326 IAC 2–2–11, Stack height provisions; 326 IAC 2–2–12, Permit recission; 326 IAC 2–2–13, Area designation and redesignation; 326 IAC 2–2–14, Sources impacting Federal Class I areas: additional requirements; 326 IAC 2–2–15, Public participation; 326 IAC 2–2–16, Ambient air ceilings; 326 IAC 2–1.1–6, Public notice, and 326 IAC 2–1.1–8, Time periods for determination on permit applications.

As noted in EPA’s January 15, 2003 direct final rulemaking, EPA believes that it is appropriate to grant conditional approval. However, should Indiana fail to correct the identified deficiency within one year of this action, EPA will initiate withdrawal of this approval. In addition, while EPA is approving Indiana’s PSD SIP, EPA recognizes that it has a responsibility to insure that all states properly implement their preconstruction permitting programs. EPA’s approval of the State’s PSD program does not divest the Agency of the duty to continue appropriate oversight to insure that PSD determinations made by Indiana are consistent with the requirements of the CAA, EPA regulations, and the SIP. EPA’s authority to oversee PSD program

implementation is set forth in sections 113, 167, and 505(b) of the Act. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not “conform to the requirements of” the PSD program. Similarly, section 113(a)(5) provides for administrative orders and civil actions whenever EPA finds that a State “is not acting in compliance with” any requirement or prohibition of the Act regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.

Enactment of Title V of the CAA and the EPA objection opportunity provided therein has added new tools for addressing deficient new source review decisions by states. Section 505(b) requires EPA to object to the issuance of a permit issued pursuant to Title V whenever the Administrator finds during the applicable review period, either on her own initiative or in response to a citizen petition, that the permit is “not in compliance with the requirements of an applicable requirement of this Act, including the requirements of an applicable implementation plan.”

Regardless of whether EPA addresses deficient permits using objection authorities or enforcement authorities or both, EPA cannot intervene unless the state decision fails to comply with applicable requirements. Thus, EPA may not intrude upon the significant discretion granted to states under new source review programs, and will not “second guess” state decisions. Rather, in determining whether a Title V permit incorporating PSD provisions calls for EPA objection under section 505(b) or use of enforcement authorities under sections 113 and 167, EPA will consider whether the applicable substantive and procedural requirements for public review and development of supporting documentation were followed. In particular, EPA will review the process followed by the permitting authority in determining best available control technology, assessing air quality impacts, meeting Class I area requirements, and other PSD requirements, to ensure that the required SIP procedures (including public participation and Federal Land Manager consultation opportunities) were met. EPA will also review whether any determination by the permitting authority was made on reasonable

grounds properly supported on the record, described in enforceable terms, and consistent with all applicable requirements. Finally, EPA will review whether the terms of the PSD permit were properly incorporated into the operating permit.

#### D. Statutory and Executive Order Reviews

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. 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 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 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 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 approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This 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 Clean Air 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 Clean Air 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 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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. 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. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 2, 2003. 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 24, 2003.

**Thomas V. Skinner,**

*Regional Administrator, Region 5.*

For the reasons stated in the preamble, part 52, chapter I of 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.*

2. Section 52.770 is amended by adding (c)(147) to read as follows

#### **§ 52.770 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(147) On February 1, 2002, Indiana submitted its Prevention of Significant Deterioration rules as a revision to the State implementation plan.

(i) Incorporation by reference.

(A) Title 326 of the Indiana Administrative Code, Rules 2-2-1, 2-2-2, 2-2-3, 2-2-4, 2-2-5, 2-2-6, 2-2-7, 2-2-8, 2-2-9, 2-2-10, 2-2-11, 2-2-12, 2-2-13, 2-2-14, 2-2-15, 2-2-16. Filed with the Secretary of State on March 23, 2001, effective April 22, 2001. (B) Title 326 of the Indiana Administrative Code, Rules 2-1.1-6 and 2-1.1-8. Filed with the Secretary of State on November 25, 1998, effective December 25, 1998. Errata filed with the Secretary of State on May 12, 1999, effective June 11, 1999.

[FR Doc. 03-5024 Filed 2-28-03; 8:45 am]

BILLING CODE 6560-50-P

#### FEDERAL EMERGENCY MANAGEMENT AGENCY

#### 44 CFR Part 61

RIN 3067-AD33

#### National Flood Insurance Program (NFIP); Standard Flood Insurance Policy

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** We (the Federal Insurance and Mitigation Administration of FEMA) are increasing the limit of liability under Coverage D—Increased Cost of Compliance (ICC) of the Standard Flood Insurance Policy from \$20,000 to \$30,000. New information has led us to decrease our estimate of annual ICC claims, and based on this decrease, we believe the limit of liability can be increased with no change in premium.