6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2010-0611; FRL-9923-24-Region 6]

Approval and Promulgation of Implementation Plans; Texas; Revision to Control of Air Pollution from Volatile Organic Compounds; Alternative Leak Detection and Repair Work Practice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a Texas State Implementation Plan (SIP) revision for control of volatile organic compound (VOC) emissions from fugitive sources that was submitted to EPA on July 2, 2010. The SIP revision allows for a voluntary alternative work practice to detect fugitive emission leaks using optical gas imaging instruments under the EPA federal Leak Detection and Repair (LDAR) requirements. The EPA is approving this SIP revision pursuant to section 110 of the Clean Air Act (CAA) and consistent with EPA's guidance and regulations.

DATES: This rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless EPA receives relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF**

PUBLICATION IN THE FEDERAL REGISTER]. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. **EPA-R06-OAR-2010-0611**, by one of the following methods:

• *www.regulations.gov:* Follow the on-line instructions.

. • E-mail: Jennifer Huser at huser.jennifer@epa.gov.

• Mail or delivery: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2010-0611. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* website is an “anonymous access” system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. 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. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Jennifer Huser, (214) 665-7347, *huser.jennifer@epa.gov*. To inspect the hard copy materials, please schedule an appointment with Ms. Huser or Mr. Bill Deese at (214) 665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

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I. Background

A. CAA and SIPs

Section 110 of the CAA requires states to develop and submit to EPA a SIP to ensure that state air quality meets National Ambient Air Quality Standards (NAAQS). These NAAQS standards currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. EPA-approved SIPs, including control strategies are federally enforceable. As needed, States revise the SIP and submit revisions to EPA for approval.

B. SIP Revision Submitted on July 2, 2010

On July 2, 2010, the Texas Commission on Environmental Quality (TCEQ) submitted revisions to the Texas SIP LDAR rules to allow a voluntary alternative work practice to detect fugitive emission leaks using optical gas imaging. The submitted SIP revisions amended Texas Administrative Code (TAC) at 30 TAC Chapters 115.322 – 115.326, 115.352 – 115.357, 115.781, 115.782, and 115.768-788, and added new 30 TAC Chapter 115.358 and 30 TAC Chapter 115.784, Control of Air Pollution from Volatile Organic Compounds. The federal and state LDAR program is a fundamental aspect of air pollution control by reducing emissions from leaking piping components and instrumentation.

Section 172(c)(1) and 182 of the CAA require ozone nonattainment areas that are classified as moderate and above for ozone nonattainment to adopt Reasonably Available Control Technology (RACT) requirement for sources that are subject to Control Technique Guidelines (CTGs) issued by EPA and for “major sources” of VOCs and nitrogen oxides (NOx).

Major sources are defined as the following for each affected nonattainment area: in areas classified as moderate, those sources that the potential to emit at least 100 tons per year (tpy) of VOCs or NOx; for areas classified as serious, those that have the potential to emit 50 tpy of VOCs or NOx; and in areas classified as severe, those sources that have the potential to emit at least 25 tons per year of VOCs or NOx. See Section 182(c) of the CAA. The Dallas-Fort Worth (DFW) ozone nonattainment area for the 1997 8-hour ozone standard consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall and Tarrant Counties. The DFW area was reclassified as serious ozone nonattainment for the 1997 8-hour ozone standard (75 FR 79302, December 20, 2010). The Houston-Galveston-Brazoria (HGB) ozone nonattainment area for the 1997 8-hour ozone standard consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties. The HGB area was classified as a severe ozone nonattainment area for the 1997 8-hour ozone NAAQS (73 FR 56983, October 1, 2008). The Beaumont Port Arthur (BPA) area of the 1997 8-hour ozone standard consists of Hardin, Jefferson, and Orange Counties.

The fugitive emission LDAR rules in 30 TAC Chapter 115 (denoted as 30 TAC 115), referenced above, fall under two general categories, and are incorporated into the SIP: 1) 30 TAC 115, Subchapter D, Divisions 2 and 3 cover general VOC fugitive emission LDAR rules and were adopted to satisfy reasonably available control technology (RACT) requirements of the CAA (see 73 FR 10383, March 28, 2008 for Division 2 and 73 FR 40972, September 15, 2008 for Division 3); and 2) the highly-reactive volatile organic compounds (HRVOC) fugitive emission LDAR rules, in 30 TAC 115, Subchapter H, Division 3 were adopted as part of the HGB attainment demonstration for the one-hour ozone NAAQS (see 71 FR 52655, December 6, 2006). The revision incorporates the voluntary alternative work practice for both categories

consistent with the alternative work practice adopted by the EPA on December 22, 2008 (73 FR 78199). For the first category, Subchapter D, Division 2 applies to petroleum refineries in Gregg, Nueces, and Victoria counties and 30 TAC Chapter 115, Subchapter D, Division 3 applies to the following facility types in the BPA, DFW, El Paso, and HGB areas as defined in 30 TAC 115.10: petroleum refineries; synthetic organic chemical, polymer, resin, or methyl-tert-butyl ether manufacturing processes; or natural gas/gasoline processing operations. For the second category, 30 TAC 115, Subchapter H, Division 3 applies to the following facility types in the HGB area as defined in 30 TAC 115.10 that have HRVOC as raw material, intermediate, final product, or in a waste stream: petroleum refineries; synthetic organic chemical, polymer, resin, or methyl-tert-butyl ether manufacturing processes; or natural gas/gasoline processing operations.

The SIP revision submitted by Texas is provided in the docket for this rulemaking.

C. What Criteria must be met for EPA to Approve this SIP revision?

The primary CAA requirements pertaining to the SIP revision submitted by Texas are found in CAA sections 110(l) and 182(b)(2). CAA section 110(l) requires that a SIP revision submitted to EPA be adopted after reasonable notice and public hearing. Section 110(l) also requires that we not approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. CAA section 182(b)(2) requires that ozone nonattainment areas classified as moderate or above implement RACT controls on all major VOC and NOx emission sources and on all sources and source categories covered by a control technique guideline (CTG) issued by EPA. RACT is defined as the lowest emissions limitation that a particular source is

capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762, September 17, 1979). The CTG and Alternative Control Technique (ACT) documents that we issue provide states with guidance concerning what types of controls could constitute RACT for a given source category. The documents we have issued pertaining to fugitive emissions from equipment leaks are (1) Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment (EPA-450/2-78-036, June 1978), (2) Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants (EPA-450/3-83-007, December 1983), and (3) Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment EPA-450/3-83-006, March 1984). These documents are accessible online at *www.epa.gov/airquality/ozonepollution/SIPToolkit/ctgs.html*. Because the DFW area was classified as a serious ozone nonattainment area for the 1997 8-hour ozone standard, a major source is a source having the potential to emit 50 tpy of VOC or more (CAA §182(c)). Because the HGB area is classified as a severe ozone nonattainment area for the 1-hour ozone standard, a major source is a source having the potential to emit 25 tpy of VOC or more (CAA §182(d)).

II. EPA's Evaluation

The alternative work practice is a voluntary alternative to hydrocarbon analyzers required by EPA Method 21 (See the technical support document (TSD) for more detail)[1] to detect volatile organic compound leaks from equipment such as valves, pumps, connectors, compressors, pressure relief valves, etc. While EPA demonstrated that the use of optical gas imaging in the alternative work practice is equivalent to using a hydrocarbon analyzer in EPA Method 21, the optical gas imaging technology available today is generally not capable of

[1] The TSD is in the docket for this rulemaking.

measuring concentration and has a higher detection limit than the hydrocarbon analyzers. Therefore, the methods are not interchangeable and therefore the alternative work practice cannot simply be included as an alternate method. The fundamental premise behind EPA's rule in allowing the alternative work practice is that more frequent monitoring with the optical gas imaging device will detect larger leaks sooner resulting in a more expedient repair of the leaks. While smaller leaks may not be detected using the optical gas imaging device, the overall control level under the optical gas imaging alternative work practice is considered equivalent, or in some cases superior to, the traditional LDAR work practice using Method 21. This makes the alternative work practice more similar to an alternate means of control rather than an alternative test method. EPA's rationale in approving the alternate work practice is further discussed in the December 22, 2008 *Federal Register* (73 FR 78199). While EPA adopted the use of the alternative work practice for numerous federal LDAR rules, many facilities will not be able to make use of the alternative work practice until the fugitive emission LDAR rules are revised in the Texas SIP. Additionally, the proposed SIP revision does not change the New Source Review (NSR) permit requirements, and therefore sources choosing to implement the alternative work practice will need to change the facility's permit LDAR requirements through the SIP-approved NSR permit amendment process.

In its adopted rule, TCEQ made several substantive changes that were not required by the federal alternative work practice in 40 CFR Part 60.18. These additional requirements were added by TCEQ to ensure that personnel using optical gas imaging instruments have adequate training and to address quality assurance and enforcement concerns with the federal alternative work practice in 40 CFR Part 60.18. These changes include:

- Each person operating an optical gas imaging instrument for the purposes of the alternative work practice will be required to conduct the daily instrument check. [30 TAC 115.358(c)(2)]
- Owners or operators electing to use the alternative work practice will be required to submit notification to the appropriate TCEQ regional office at least 30 days prior to implementation. [30 TAC 115.358(g)]
- Operator training will be required for personnel performing the alternative work practice. [30 TAC 115.358(h)]
- A specific subset of components (e.g., blind flanges, heat exchanger heads, sight glasses, etc.) subject to 30 TAC 115.781(b)(3) may be sampled at alternate frequencies for the annual Method 21 test required under the alternative work practice if the components are not subject to a federal LDAR Method 21 requirement under 40 CFR Parts 60, 61, 63, or 65 [30 TAC 115.781(h)(6)].

TCEQ also added provisions to the federal alternative work practice specifically to ensure there would be no backsliding for the HRVOC fugitive emission LDAR rules in 30 TAC 115, Subchapter H, Division 3. Those changes include:

- For leaks greater than 10,000 part per million by volume (ppmv), rapid repair times are required under 30 TAC 115.782(b) and extraordinary efforts must be undertaken within a shorter time period to qualify for delay of repair under 30 TAC 115.782(c). The rulemaking will require any leak detected using the alternative work practice to meet the more stringent repair time limits of 30 TAC 115.782(b) and (c) unless a Method 21 test is done to demonstrate that the leak is 10,000 ppmv or less.

- The rule will retain the third-party audit requirements of 30 TAC 115.788; however, an alternative audit procedure will be required if the company is using the alternative work practice.
- Consistent with EPA guidance, Protocol for Equipment Leak Emission Estimates, EPA-453/R-95-017, November 1995, 30 TAC 115.782(c) requires companies to use EPA correlation equations for calculating emissions. For leaks detected using the alternative work practice, a company will be required to use the 100,000 ppmv pegged emission rates from the same section of the EPA guidance document currently referenced in the rule at 30 TAC 115.782(c)(1)(i)(II).

The SIP revision is approvable as it is consistent with the EPA federal LDAR rule that provides an alternative to required monitoring for fugitive components to ensure facilities identify and repair leaking equipment in a timely and effective manner to reduce fugitive air emissions. In addition the SIP revision improves upon the SIP-approved rules in that it provides for this voluntary alternative method for the detection of fugitive emissions from leaking components, as detailed in our TSD. Approval of this SIP revision would not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. Lastly, EPA's review indicates that the Texas AWP provisions are as stringent as or more stringent than the federal AWP and provide no relaxation of the state's rules for leak detection and repair.

III. Final Action

We are taking direct final action to approve revisions to the Texas SIP that pertain to the control of air pollution from VOCs alternative LDAR work practice, adopted by the TCEQ on June 2, 2010, and submitted to the EPA on July 2, 2010. EPA is approving these revisions in accordance with sections 110, 173 and 182 of the CAA and consistent with EPA's guidance and regulations.

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on **[insert date 60 days from date of publication]** without further notice unless we receive relevant adverse comment by **[insert date 30 days from date of publication]**. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided

that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.);
- 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);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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. 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. section 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 **[insert date 60 days from date of publication]**. 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, Alternative work practice, Incorporation by reference, Leak Detection and Repair, Optical gas imaging, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 9, 2015.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52–APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 *et seq*.

Subpart SS – Texas

2. In § 52.2270 (c), the table titled "EPA Approved Regulations in the Texas SIP" is amended by:

a. Revising the entries for sections 115.322 through 115.326, 115.352 through 115.357, 115.781, 115.782, and 115.786 through 115.788; and

b. Adding in sequential order entries for sections 115.358 and 115.784.

The revisions and additions read as follows:

§ 52.2270 Identification of plan.

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(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
* * * * * * *				
Chapter 115 (Reg 5)—Control of Air Pollution From Volatile Organic Compounds				
* * * * * * *				
Subchapter D—Petroleum Refining, Natural Gas Processing, and Petrochemical Processes				
* * * * * * *				
Division 2: Fugitive Emission Control in Petroleum Refineries in Gregg, Nueces, and Victoria Counties				

Section 115.322	Control Requirements	6/2/2010	**[Insert date of publication in the Federal Register] [Insert Federal Register citation]**	
Section 115.323	Alternate Control Requirements	6/2/2010	**[Insert date of publication in the Federal Register] [Insert Federal Register citation]**	
Section 115.324	Inspection Requirements	6/2/2010	**[Insert date of publication in the Federal Register] [Insert Federal Register citation]**	
Section 115.325	Testing Requirements	6/2/2010	**[Insert date of publication in the Federal Register] [Insert Federal Register citation]**	
Section 115.326	Recordkeeping Requirements	6/2/2010	**[Insert date of publication in the Federal Register] [Insert Federal Register citation]**	
* * * * * * *				
Division 3: Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas				
Section 115.352	Control Requirements	6/2/2010	**[Insert date of publication in the Federal Register] [Insert Federal Register citation]**	

Section 115.353	Alternate Control Requirements	6/2/2010	**[Insert date of publication in the Federal Register] [Insert Federal Register citation]**	
Section 115.354	Monitoring and Inspection Requirements	6/2/2010	**[Insert date of publication in the Federal Register] [Insert Federal Register citation]**	
Section 115.355	Approved Test Methods	6/2/2010	**[Insert date of publication in the Federal Register] [Insert Federal Register citation]**	
Section 115.356	Recordkeeping Requirements	6/2/2010	**[Insert date of publication in the Federal Register] [Insert Federal Register citation]**	
Section 115. 357	Exemptions	6/2/2010	**[Insert date of publication in the Federal Register] [Insert Federal Register citation]**	
Section 115.358	Alternative Work Practice	6/2/2010	**[Insert date of publication in the Federal Register] [Insert Federal Register citation]**	
* * * * * * *				
Subchapter H—Highly-Reactive Volatile Organic Compounds				

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Division 3: Fugitive Emissions				
* *	* *	* *	*	
Section 115.781	General Monitoring and Inspection Requirements	6/2/2010	**[Insert date of publication in the Federal Register] [Insert Federal Register citation]**	
Section 115.782	Procedures and Schedule for Leak Repair and Follow-up	6/2/2010	**[Insert date of publication in the Federal Register] [Insert Federal Register citation]**	
* *	* *	* *	*	
Section 115.784	Alternate Control Requirements	6/2/2010	**[Insert date of publication in the Federal Register] [Insert Federal Register citation]**	
Section 115.786	Recordkeeping Requirements	6/2/2010	**[Insert date of publication in the Federal Register] [Insert Federal Register citation]**	
Section 115.787	Exemptions	6/2/2010	**[Insert date of publication in the Federal Register] [Insert Federal Register citation]**	

Section 115.788	Audit Provisions	6/2/2010	**[Insert date of publication in the Federal Register] [Insert Federal Register citation]**	
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[FR Doc. 2015-03588 Filed 02/25/2015 at 8:45 am; Publication Date: 02/26/2015]