

Dated: December 14, 1989.

T.M. Curelli,

Lieutenant Commander, Acting Captain of the Port, U.S. Coast Guard, Duluth, MN.

[FR Doc. 90-398 Filed 1-8-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3703-4]

Approval and Promulgation of Implementation Plans; State of Missouri—Permit Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking takes final action to approve a revision to the Missouri State Implementation Plan (SIP) which: (1) Gives the Missouri Air Conservation Commission (MACC) the legal authority to establish rules to increase the filing fee and to require a processing fee for construction permits; and (2) amends the Missouri Department of Natural Resources (MDNR) Rule 10 CSR 10-6.060, Permits Required, fee system for air permits. This action is in response to section 110(a)(2)(K) of the Clean Air Act (Act) which requires states to include a permit fee system in their SIPs.

Missouri initially submitted the SIP revision to EPA on January 24, 1989. Review of the revision indicates that Missouri has met the requirements of section 110(a)(2)(K) of the Act.

DATES: This action will become effective on March 12, 1990 unless notice is received by February 8, 1990 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during business hours at:

Environmental Protection Agency,
Region VII, Air Branch, 726 Minnesota
Avenue, Kansas City, Kansas 66101

Missouri Department of Natural
Resources, Air Pollution Control
Program, Jefferson State Office
Building, 205 Jefferson Street,
Jefferson City, Missouri 65101

Public Information Reference Unit,
Environmental Protection Agency, 401
M Street SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT:
Michael T. Marshall at (913) 236-2893
(FTS 757-2893).

SUPPLEMENTARY INFORMATION:

Background

Section 110(a)(2)(K) of the Act requires states to include a permit fee system in their SIPs. The states are required to collect fees from owners or operators of major stationary sources for permits issued pursuant to the Act. The fees should be sufficient to cover the reasonable costs of reviewing and acting upon any application for such a permit and the cost of implementing and enforcing the terms and conditions of such permit (excluding court costs and other costs associated with any enforcement action).

In 1981, EPA developed a "Permit Fee Guideline" (EPA-450/2-81-003) to assist states with the preparation of revisions to their SIPs which address the permit fee requirement. The guideline includes a review of the Act requirements for permit fees: Legislative history and relevant court cases; costs to be considered; basic program implementation considerations; and examples of fee systems in effect around the country. According to the guideline document, the states are given considerable flexibility in selecting the types of fees they could use to recover permit-related expenses. The guideline states that "(at) a minimum, fees should be collected, for permits required under the Act, from major stationary sources as defined in section 302(j) of the Act, and as further defined under section 169(l) for prevention of significant deterioration, and section 169A(g)(7) for visibility protection."

The original MACC Law, passed in 1967, gave the MACC the authority to adopt regulations to require permits prior to the construction or modification of an air contaminant source. MACC adopted a construction permit regulation for the four regulated areas of the state (St. Louis in 1968, Kansas City in 1969, Springfield-Greene County in 1969, and the remainder of the state in 1970). These were included in the original SIP.

The Missouri General Assembly changed the state legal authority in 1972 to require a fee be paid when submitting a request for a construction permit. The legal authority and the changed regulations requiring a \$25 filing fee for construction permits were made part of the Missouri SIP (40 CFR 52.1320 (5) and (6)). In 1976 Missouri recodified all state rules into a "Code of State Regulations" (CSR), and in 1979 the MACC withdrew the previous four area rules and consolidated them into one construction permit rule (10 CSR 10-6.060, Permits Required). 10 CSR 10-6.060 was made part of the Missouri SIP in 1980 (40 CFR 52.1320(c)(18)).

Missouri Submittal

In 1988, the Missouri 84th General Assembly passed legal authority (HB-1187) requiring the MACC to establish a permit fee regulation to require a permit applicant to reimburse the state for "all reasonable costs incurred" in processing a permit. HB-1187 increased the filing fee to \$100 and added an hourly rate with an upper limit of \$100 per hour.

The proposed changes to 10 CSR 10-6.060, Permits Required, were published in Volume 13, Number 18, September 19, 1989, of the Missouri Register. MACC held a public hearing, after a 30-day public notice period, on October 19, 1988. MACC adopted the changes to the rule. The "Order of Rulemaking" was published in the Volume 13, Number 24, December 19, 1988, Missouri Register. The rule became effective January 1, 1989.

Review of the Missouri Submittal

The Missouri submittal has been reviewed to determine if it meets the requirements of the Act and applicable EPA policies. 10 CSR 10-6.060, Permits Required, as amended, fulfills the requirements of HB-1187 by providing a fee system for MDNR to recover all reasonable costs associated with the processing of construction permit applications. The increased filing fee of \$100 per application and an hourly rate of \$50 should be sufficient to recover all costs incurred by MDNR to process a construction permit. The funds collected are deposited directly into a special fund, "Natural Resources Protection Fund—Air Pollution Permit Fee Subaccount."

The state of Missouri held a public hearing as described above on the various portions of the Missouri SIP. The state submitted the amendments to 10 CSR 10-6.060 on January 24, 1989, to Region VII EPA as a revision to the Missouri SIP. The legal authority for the increased filing fee and the permit processing fee was submitted to Region VII on September 27, 1989, as an addendum to the January 24, 1989, request for SIP revision.

The comments on the proposed amendments to 10 CSR 10-6.060 are summarized and the state responses provided in the Missouri Register of December 19, 1989, where the final amendments are printed. Certifications that the hearings took place were submitted with the SIP revision request. Region VII EPA has reviewed the SIP revision and found it, along with the existing Missouri SIP, to satisfy the requirements of section 110(a)(2)(K) of the Act.

By this notice EPA is approving those sections' Chapter 643, Revised Statutes of Missouri, which were amended by the passage of HB-1187 in 1988, and revisions to 10 CSR 6.060, Permits Required, relating to the permit fee requirements, as meeting the requirements of section 110(a)(2)(K) of the Act.

EPA has reviewed this revision to the Missouri SIP and is approving it as submitted. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective March 12, 1990 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective March 12, 1990.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental

factors, and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under Section 307(b)(1) of the Act, as amended, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by March 12, 1990. 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

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, and Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the state of Missouri was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 7, 1989.

Morris Kay,
Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

Subpart AA—Missouri

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1320 is amended by adding paragraph (c)(69) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(69) A plan revision to change the construction permit fees was submitted by the Department of Natural Resources on January 24, 1989, and September 27, 1989.

(i) Incorporation by reference
(A) Revision to 10 CSR 10-6.060, Permits Required, amended December 19, 1988, effective January 1, 1989.

(ii) Additional material
(A) Chapter 643 RSMo (House Bill Number 1187) passed by the General Assembly of the state of Missouri in 1988.

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{FR Doc. 90-458 Filed 1-8-90; 8:45 am}

BILLING CODE 6560-50-M