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6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R06-OAR-2012-0205; FRL-9931-37-Region 6]**

**Approval and Promulgation of Implementation Plans; Texas; El Paso**

**Particulate Matter Contingency Measures**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve under the Federal Clean Air Act (CAA) State Implementation Plan (SIP) revisions submitted by the State of Texas. These revisions pertain to contingency measures for particulate matter in the City of El Paso. The affected contingency measures are the paving of alleys and sweeping of streets.

**DATES:** Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2012-0205, by one of the following methods:

- *www.regulations.gov*. Follow the online instructions.
- E-mail: Jeffrey Riley at *riley.jeffrey@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-2012-0205. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 electronically any information that you consider to be CBI or other information whose disclosure is restricted by statute. The *www.regulations.gov* website is an “anonymous access” system, which means that the 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 the EPA without going through *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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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. . Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include

discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional information on submitting comments, please visit

<http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://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:** Jeffrey Riley, 214-665-8542, [riley.jeffrey@epa.gov](mailto:riley.jeffrey@epa.gov). To inspect the hard copy materials, please schedule an appointment with Mr. Riley or Mr. Bill Deese at 214-665-7253.

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

## **I. Background**

### *A. El Paso PM<sub>10</sub> History*

Under the 1990 CAA Amendments, the City of El Paso, Texas was designated by operation of law as nonattainment of the 1987 National Ambient Air Quality Standard (NAAQS) for particulate matter (PM) with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM<sub>10</sub>) and classified as a moderate nonattainment area. The EPA approved on

January 18, 1994 at 59 FR 02532, the El Paso PM<sub>10</sub> Attainment Demonstration SIP revision. The SIP included, among other things, PM control measures and a Memorandum of Understanding between the City of El Paso and the State of Texas (MOU). The EPA approved three types of PM control measures as contingency measures because they went beyond reasonably available control measures and were not relied upon to show attainment or reasonable further progress (RFP). The three types of PM control measures approved as contingency measures were prescribed burning, residential burning, and fugitive dust control measures. The fugitive dust measures include not only controls for roads, streets, alleys, parking lots, construction and demolition sites, and materials handling, but also a requirement that existing unpaved alleys be paved at a rate of 15 miles per year and mechanical sweepers remove soil from roads four times per year in the city limits and six times per week in the central business district. The SIP MOU between the City of El Paso and the State of Texas outlines the responsibilities and regulatory requirements for both parties in implementing the dust control methods.

#### *B. Texas' Submittals*

On March 7, 2012, the Texas Commission on Environmental Quality (TCEQ) submitted revisions to remove the requirement to pave alleys at the rate of 15 miles per year, and replace it with the following requirements: 1) all new alleys must be paved; 2) unpaved alleys cannot be used for residential garbage and recycling collection; and 3) recycled asphalt product (RAP) may be used as an alternate means of control for unpaved alleys. The revisions also changed the street sweeping frequency requirement from four times per year to three times per year in the city limits and from six times per week to four times per week in the central business district. TCEQ provided supplemental information dated December 3, 2014 updating the unpaved alleys inventory between 2010 through 2014.

## **II. The EPA's Evaluation**

Section 110(l) of the CAA states that the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirement of the CAA. Contingency Measures are a required element of an attainment demonstration, to be implemented if the area fails to attain. In this case, the City implemented early the contingency measures for paving of alleys and street sweeping on an on-going basis since 1991, even though not required by the EPA. Implementation of these measures has continued even after the 1994 attainment date. To demonstrate noninterference, Texas provided a qualitative analysis of the emission reductions achieved by these measures coupled with evaluation of air quality data to show that the level of emissions provided for by the revised early implemented contingency measures would not interfere with attainment or RFP.

At the time of the EPA's approval of the paving of alleys as a contingency measure, there were an estimated 89 miles of unpaved alleys, and all unpaved roads in the city of El Paso were required to be paved in order to reduce this source category's projected 1994 PM<sub>10</sub> emissions by 0.5 percent. The State documents that the inventory of unpaved alleys in El Paso has decreased from 66% of total alley miles in 1991, to 16% of total alley miles in 2010, with approximately 23 miles of unpaved alleys remaining. The supplemental information provided to the EPA shows that between 2010 through 2014, the percentage of unpaved alleys has continued to decrease to 13% of the total inventory, with approximately 17 miles of unpaved alleys remaining. A total of 72 alley miles have been paved, the estimated emissions reductions for 1994 were met in 1994, and emissions reductions continued after that date. In the SIP submittal, the City commits to continue paving alleys. The additional compliance option of using RAP as a paving material

helps ensure continued reduction of the inventory of uncontrolled alleys. The EPA agrees that RAP can be effective in suppressing dust.

The overall inventory of unpaved alleys in El Paso has continued to decrease, and thereby further reductions in  $PM_{10}$  levels have occurred well beyond the decrease in inventory of unpaved alleys approved as the contingency measures. Furthermore, there will be no increase in unpaved alleys because the SIP revision requires that all new alleys be paved. As a practical matter, the EPA recognizes that a rate of 15 miles of paving per year could not be maintained unless the City were to create unpaved alleys in order to pave them.

As additional support for the change to the rate of paving of alleys, the submitted revision prohibits garbage collection in unpaved alleys; the City since 1997 stopped garbage collection in paved and unpaved alleys. The significant paving progress, the requirement to pave new alleys, and prohibition of garbage collection in alleys have reduced the overall amount of fugitive dust in the El Paso area. In the SIP submittal, the City commits to continue sweeping on a different schedule. Because the emissions reductions from paving and street sweeping are from already-implemented contingency measures, thus above what was needed to show attainment, and the reductions continue, the PM reductions from these measures are above and beyond what is required to show continued maintenance of the NAAQS.

The State's submittal also relied upon ambient monitoring data for the years 2007 through 2009 to demonstrate there will be no interference with attainment. The El Paso area continues to monitor attainment of the  $PM_{10}$  NAAQS based on data for all three years from 2011 through 2013. See the TSD for additional information on the monitoring data.

Because the fugitive dust controls are early implemented contingency measures, they were not relied upon for demonstrating attainment or RFP; paving of new alleys is required; the

inventory of pre-existing unpaved alleys has been reduced from 66% of total alleys to 13%; and paving continues using the effective RAP, the EPA finds that the SIP revision will not interfere with the area's ability to continue to attain or maintain the affected NAAQS or other CAA requirements.

### **III. Proposed Action**

We are proposing to approve revisions to the Texas SIP that pertain to changes to the PM<sub>10</sub> contingency measures in the City of El Paso. The State's revisions submitted on March 7, 2012 amend rule 30 TAC §111.147(1)(E) by removing the requirement to pave alleys at the rate of 15 miles/year, and replace it with the following requirements:

- 1) All new alleys must be paved;
- 2) Alleys may not be used for trash pickup; and
- 3) The use of recycled asphalt product as defined in §111.145 and §111.147(1) may be used as an alternate means of particulate matter control for alleys.

We also are proposing to approve 30 TAC §111.145 and §111.147(1) that define RAP, and 30 TAC § 111.147(2) that changes the sweeping frequency requirement from four to three time per year in the city limits and from six to four times per week in the El Paso central business district. We have evaluated the State's submittals and have determined that they meet the applicable requirements of the Clean Air Act and EPA regulations, and are consistent with EPA policy.

### **IV. Incorporation by Reference**

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

## **V. 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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve 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 the 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 the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR part 52**

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: August 5, 2015.

**Ron Curry,**

*Regional Administrator, Region 6.*

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