



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2009-0648; FRL-9931-31-Region 6]

Approval and Promulgation of Implementation Plans; New Mexico; Nonattainment New Source Review Permitting State Implementation Plan Revisions for the City of Albuquerque-Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the New Mexico State Implementation Plan (SIP) for the City of Albuquerque-Bernalillo County. These revisions provide updates to the City of Albuquerque-Bernalillo County major Nonattainment New Source Review (NNSR) permit program. The EPA is proposing this action under section 110 and part D of the Clean Air Act (CAA or the Act).

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No.EPA-R06-OAR-2009-0648, by one of the following methods:

- <http://www.regulations.gov>. Follow the online instructions.
- E-mail: Ms. Erica Le Doux at ledoux.eric@epa.gov.

- Mail or delivery: Ms. Erica Le Doux, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2009-0648. 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 <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 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 <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, 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.

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: Ms. Erica Le Doux, (214) 665-7265, ledoux.eric@epa.gov. To inspect the hard copy materials, please schedule an appointment with Ms. Le Doux or Mr. Bill Deese at (214) 665-7253.

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

I. Background

The Act at section 110(a)(2)(C) requires states to develop and submit to the EPA for approval into the state SIP, preconstruction review programs applicable to new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the NSR SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that are designated as meeting the National Ambient Air Quality Standards (NAAQS), i.e., “attainment areas”, as well as areas designated as “unclassifiable” because there is insufficient information to determine if the area meets the NAAQS. The NNSR SIP program is established in part D of title I of the CAA and applies in areas that are designated as not being in attainment of the NAAQS, i.e., “nonattainment areas.” The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source thresholds and thus do not qualify as “major” and applies regardless of the designation of the area in which a source is located. The revisions to 20.11.60 NMAC submitted

on August 16, 2010 and July 26, 2013 were submitted as revisions to the City of Albuquerque-Bernalillo County NNSR permit program and will be evaluated against the requirements for NNSR programs at 40 CFR 51.160 – 51.165.

A. August 16, 2010, Submittal

On August 16, 2010, the Governor Bill Richardson submitted revisions to the New Mexico SIP that incorporated revisions to the NMAC for the City of Albuquerque-Bernalillo County. The August 16, 2010, submittal includes final revised regulation sections 1, 2, 6, 7, 12 through 27 (including five new additional sections) in 20.11.60 NMAC, Permitting in Nonattainment Areas. The updates that were accepted by the Albuquerque-Bernalillo County Air Quality Control Board constitutes the integration of language that is consistent with federal NNSR permitting regulations.

B. July 26, 2013, Submittal

On July 26, 2013, the designee of the Governor, New Mexico Environment Department Cabinet Secretary, Ryan Flynn, submitted revisions to the SIP. This SIP submittal incorporated revisions to the NMAC for the City of Albuquerque-Bernalillo County. It includes final revised regulation sections 6, 7, 12, 13, and 15 in 20.11.60 NMAC, Permitting in Nonattainment Areas. The updates that were accepted by the Albuquerque-Bernalillo County Air Quality Control Board constitutes the integration of language that is consistent with federal NNSR permitting regulations.

C. What is not included in today's proposed action?

The EPA also received in the August 16, 2010 submittal revisions to regulations within 20.11.61 NMAC – Prevention of Significant Deterioration (PSD) permitting program and

Infrastructure SIP for Particulate Matter less than 2.5 Micrometers (PM_{2.5}) and Ozone (O₃). In the July 26, 2013 submittals, revisions to regulations within 20.11.61 NMAC – PSD permitting program and 20.11.42 NMAC – Operating Permits were also included. The revisions to 20.11.61 NMAC were submitted as revisions to the New Mexico SIP. The 20.11.42 NMAC revisions were submitted as an update the title V program. As part of this review, EPA is taking action only on the submitted revisions to 20.11.60 NMAC. We are addressing the amended regulations in 20.11.61 NMAC as part of separate SIP action (*See* 80 FR 28901); for the revisions to 20.11.42 NMAC, it will be addressed separately in a later action to update the NM title V program.

II. The EPA's Evaluation

The current SIP-approved version of 20.11.60 NMAC, Permitting in Nonattainment Areas, was last approved by EPA on April 26, 2007, and became effective on May 29, 2007. *See* 72 FR 20728. Substantive revisions to the City of Albuquerque-Bernalillo County NNSR program amend the existing state regulations to address the following federal NNSR requirements promulgated by the EPA:

- Implementation of the NSR Program for PM_{2.5} (73 FR 28321);
- PSD for PM_{2.5}-Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC) (75 FR 64864);
- Final Rule to Implement the 8-hour Ozone (O₃) NAAQS-Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to NSR and PSD as They Apply to Carbon Monoxide (CO), PM and O₃ NAAQS (70 FR 71612);

- PSD and NNSR: Reasonable Possibility in Recordkeeping (72 FR 72607); and
- PSD and NNSR: Reconsideration of Inclusion of Fugitive Rule; Interim Rule; Stay and Revisions (76 FR 17548).

Further, the amendments contained in the two submittals revise the rules to conform to the latest changes to New Mexico Air Code for the City of Albuquerque-Bernalillo County laws which must continue to meet minimum federal requirements and include grammatical and formatting corrections. In addition, more headings were added to provide clarity to the rules.

The EPA's evaluation of the revisions to the New Mexico SIP for the City of Albuquerque-Bernalillo County NNSR program included a line-by-line comparison in the TSD of the proposed revisions with the federal requirements. State and local permitting authorities may meet the requirements of 40 CFR part 51 with different but equivalent regulations. While some permitting authorities choose to incorporate by reference the applicable federal rules, other permitting authorities (such as the City of Albuquerque-Bernalillo County) choose to draft rules that track the federal language but contain differences. We found that in most cases, the state regulatory language is identical to the federal rule. Where the rules are not identical, they are at least consistent and support the federal rules and definitions. The EPA is therefore making a preliminary determination that the City of Albuquerque-Bernalillo County has adopted the necessary elements for the NNSR program to comply with the federal regulatory requirements for implementation of the PM_{2.5} and O₃ NAAQS.

III. Proposed Action

We evaluated and are proposing to approve the revisions to 20.11.60 NMAC submitted

for SIP inclusion on August 16, 2010 and July 26, 2013. The EPA has made the preliminary determination that the revisions are approvable because the submitted rules are adopted and submitted in accordance with the CAA and are consistent with the EPA's regulations for NNSR permitting at 40 CFR 51.160 – 51.165. Therefore, under section 110 and part D of the Act, and for the reasons presented above and our accompanying TSD, the EPA proposes to fully approve the specific revisions to the New Mexico SIP for the City of Albuquerque-Bernalillo County as identified below.

- Revisions to 20.11.60.1 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010;
- Revisions to 20.11.60.2 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010;
- Revisions to 20.11.60.6 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010; and adopted on April 10, 2013 and submitted on July 26, 2013
- Revisions to 20.11.60.7 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010; and adopted on April 10, 2013 and submitted on July 26, 2013
- Revisions to 20.11.60.12 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010; and adopted on April 10, 2013 and submitted on July 26, 2013
- Revisions to 20.11.60.13 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010; and adopted on April 10, 2013 and submitted on July 26, 2013
- New 20.11.60.14 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010;
- New 20.11.60.15 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010;

and adopted on April 10, 2013 and submitted on July 26, 2013

- New 20.11.60.16 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010;
- Revisions to 20.11.60.17 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010;
- Revisions to 20.11.60.18 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010;
- New 20.11.60.19 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010;
- New.11.60.20 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010;
- Revisions to 20.11.60.21 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010;
- Revisions to 20.11.60.22 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010;
- Revisions to 20.11.60.23 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010;
- Revisions to 20.11.60.24 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010;
- Revisions to 20.11.60.25 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010;
- Revisions to 20.11.60.26 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010;
- Revisions to 20.11.60.27 NMAC as adopted on July 14, 2010 and submitted on August

16, 2010;

The EPA is proposing to find that the August 16, 2010 and July 26, 2013, submittals together addresses all required NNSR elements for the implementation of the 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS. We note that the City of Albuquerque-Bernalillo County NNSR program does not include regulation of VOCs and ammonia as PM_{2.5} precursors. However, section 189(e) of the Act requires regulation of PM_{2.5} precursors that significantly contribute to PM_{2.5} levels “which exceed the standard in the area” and PM_{2.5} levels in the City of Albuquerque-Bernalillo County do not currently exceed the standard. In the event that an area is designated nonattainment for the 2012 PM_{2.5} NAAQS or any other future PM_{2.5} NAAQS, New Mexico for the City of Albuquerque-Bernalillo County will have a deadline under section 189(a)(2) of the CAA to make a submission addressing the statutory requirements as to that area, including the requirements in section 189(e) that apply to the regulation of PM_{2.5} precursors.

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 New Mexico State regulations for the City of Albuquerque-Bernalillo County 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 CAA and applicable Federal regulations. See, 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 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: August 12, 2015.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2015-20898 Filed: 8/26/2015 08:45 am; Publication Date: 8/27/2015]