



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2016-0285; A-1-FRL-9951-07-Region 1]

Air Plan Approval; New Hampshire; Rules for Reducing Particulate Emissions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of New Hampshire on March 31, 2011 and on July 23, 2013. These SIP revisions establish particulate matter (PM) and visible emissions (VE) standards for the following sources: foundries, smelters, and investment casting operations; hot mix asphalt plants; and sand and gravel sources, non-metallic mineral processing plants, and cement and concrete sources. In addition, EPA is proposing to approve a part of a SIP revision submitted by New Hampshire on March 12, 2003 that establishes procedures for testing opacity of emissions (i.e., VE). This action is being taken under the Clean Air Act.

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 ID No. EPA-R01-OAR-2016-0285 at <http://www.regulations.gov>, or via email to Arnold.Anne@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit

electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. 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 submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05-02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1684; simcox.alison@epa.gov.

SUPPLEMENTARY INFORMATION:

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

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose

II. EPA’s Evaluation of New Hampshire’s SIP Revisions

III. Proposed Action

IV. Incorporation by Reference

V. Statutory and Executive Order Reviews

I. Background and Purpose

On March 31, 2011, New Hampshire Department of Environmental Services (NH DES) submitted a State Implementation Plan (SIP) revision, which included a regulation entitled “Sand and Gravel Sources; Non-Metallic Mineral Processing Plants; Cement and Concrete Sources” (New Hampshire Code of Administrative Rules Chapter (Env-A 2800)).

On July 23, 2013, NH DES submitted SIP revisions which included the following three regulations: “Particulate Matter and Visible Emissions Standards” (Env-A 2100); “Ferrous and Non-Ferrous Foundries, Smelters, and Investment Casting Operations” (Env-A 2400); and “Hot Mix Asphalt Plants” (Env-A 2700).

The four submitted regulations (Env-A 2100, 2400, 2700, and 2800) state that opacity shall be determined in accordance with test methods established in Env-A 807. On March 12, 2003, the NH DES submitted Env-A 800, “Testing and Monitoring Procedures,” which included Part Env-A 807. On November 5, 2012, EPA approved Env-A 800 as submitted in March 2003 and revised on July 9, 2007. Although the March 2003 submittal included Env-A 807, the July 2007 submittal did not. The November 2012 approval did not take action with regard to Env-A 807. See 77 FR 66388. Therefore, Env-A 807 submitted on March 12, 2003 is still pending before EPA.

Two of the submitted regulations (Env-A 2100 and 2400) included affirmative defense provisions for malfunction, which is defined as a sudden and unavoidable breakdown of process or control equipment. The New Hampshire regulations were submitted to EPA after EPA issued

a start-up, shut-down, and malfunction (SSM) SIP Call proposal in February 2013 (78 FR 12460), which would have allowed narrowly drawn affirmative defense provisions in SIPs for malfunction. However, following issuance of our SIP Call proposal, a federal court ruled that the Clean Air Act precludes authority of the EPA to create affirmative defense provisions. EPA, therefore, believes that it cannot approve affirmative defense provisions in SIP submissions, even narrowly tailored ones for periods of malfunction (*See NRDC v EPA*, 749 F.3d 1055 (D.C. Circuit 2014)). As a result of the court decision, we issued a supplemental notice of proposed rulemaking (SNPR) on September 17, 2014 (79 FR 55920) that rescinded our previous February 2013 proposal to allow narrowly tailored affirmative defense provisions for malfunction to be included in SIPs. Therefore, on April 13, 2016, NH DES sent a letter to EPA withdrawing the affirmative defense provisions in Chapter Env-A 2100 and 2400 (i.e., 2103.03, and 2405).

After reviewing NH DES's SIP submittals for Env-A 807, 2100, 2400, 2700, 2800 and the letter withdrawing the affirmative defense provisions in Env-A 2100 and 2400, EPA is proposing to approve all of the SIP revisions without the withdrawn portions, and is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

II. EPA's Evaluation of New Hampshire's SIP Revisions

On March 12, 2003, NH DES submitted NH Code of Administrative Rules Chapter Env-A 807 for approval into the New Hampshire SIP. Env-A 807 establishes procedures for testing opacity of emissions (i.e., visible emissions) from stationary sources, and from small boilers and emergency generators. Env-A 807 also establishes testing requirements for diesel engines in

motor vehicles as well as procedures for determining opacity from fugitive emissions. Env-A 807 is not currently part of the federally-approved New Hampshire SIP. Four regulations that we are proposing to approve herein (Env-A 2100, 2400, 2700, and 2800) rely on use of test methods given in Env-A 807. Based on a review of Env-A 807, EPA has determined that the test procedures are appropriate and is proposing to approve Env-A 807 into the New Hampshire SIP.

On March 31, 2011, NH DES submitted Env-A 2800 (Sand and Gravel Sources; Non-Metallic Mineral Processing Plants; Cement and Concrete Sources) for approval into the New Hampshire SIP. This rule is not currently part of the federally-approved New Hampshire SIP.

Env-A 2800 sets standards for VE and PM emissions and fugitive-dust requirements for sand and gravel sources, non-metallic mineral processing plants, and cement and concrete sources. In addition, it establishes permit-by-notification (PBN) requirements for non-metallic mineral processing plants to replace the General State Permit (GSP) option. For all sources subject to Env-A 2800, visible fugitive emissions or visible stack emissions must not exceed 20-percent opacity for any continuous 6-minute period, and all sources are required to control emissions of dust from vehicular movement within plant property boundaries. This rule will benefit public health and the environment by controlling PM emissions and visible emissions from a variety of sources. Therefore, EPA is proposing to approve Env-A 2800 into the New Hampshire SIP.

On July 23, 2013, NH DES submitted Env-A 2100 (Particulate Matter and Visible Emissions Standards), Env-A 2400 (Ferrous and Non-Ferrous Foundries, Smelters, and Investment Casting Operations), and Env-A 2700 (Hot Mix Asphalt Plants) for approval into the New Hampshire SIP.

Env-A 2100 establishes emission standards for existing and new stationary sources or devices that emit particulate matter to the ambient air through a stack or through an exhaust and

ventilation system. This rule is not currently part of the federally-approved New Hampshire SIP. Depending on the process weight rate (0.025 to 1,000 tons per hour (tph)), the PM emission standard in Env-A 2100 for “new devices” ranges from 0.36 to 77.6 pounds per hour (lbs/hr), and for “existing devices” from 0.43 to 93.11 lbs/hr. In addition, Env-A 2100 sets allowable visible emissions for stationary sources or devices at 20 percent opacity for any continuous 6-minute period. This rule will benefit public health and the environment by controlling PM emissions from certain stationary sources. Therefore, EPA is proposing to approve Env-A 2100 into the New Hampshire SIP.

Env-A 2400 establishes emission standards for ferrous and non-ferrous foundries, smelters, and investment casting operations. This rule is not currently part of the federally-approved New Hampshire SIP. For existing foundries (installed before or on May 12, 1971) and new ferrous foundries (installed after May 12, 1971), PM emission standards in Env-A 2400 are the same as those given for existing and new sources and devices in Env-A 2100. The standards are the same for non-ferrous foundries, smelters, and investment casting operations. However, for these non-ferrous facilities and operations, “existing” is defined as before or on February 18, 1972, and “new” is defined as after February 18, 1972. In addition, for any ferrous foundry installed or modified after June 15, 1974, PM emissions must not exceed 50 milligrams per dry standard cubic meter (mg/dscm) or 0.022 grains/dscf. For all facilities covered under Env-A 2400, allowable visible emissions are set at 20 percent opacity for any continuous 6-minute period. This rule will benefit public health and the environment by controlling PM emissions from foundries, smelters, and investment casting operations. Therefore, EPA is proposing to approve Env-A 2400 into the New Hampshire SIP.

Env-A 2700 establishes emission standards for hot mix asphalt plants. The PM emission standard is set at 90 mg/dscm or 0.04 grains/dscf, which is the same standard as in the federal

Standards of Performance for Hot Mix Asphalt Facilities (40 FR 46259). In addition, visible fugitive emissions or visible stack emissions must not exceed an average of 20 percent opacity for any continuous 6-minute period. On August 22, 2012, EPA approved one provision of Env-A 2700, which was part of a SIP revision submitted by New Hampshire on January 28, 2005. See 77 FR 50651. This provision, Env-A 2703.02(a), states that “The owner or operator of a hot mix asphalt plant shall not cause or allow visible fugitive emissions or visible stack emissions to exceed an average of 20 percent opacity for any continuous 6-minute period.” NH DES withdrew the remaining parts of the January 2005 SIP submittal on July 23, 2013, when it submitted the version of Env-A 2700 that is addressed herein. In the July 23, 2013 submission, SIP-approved Env-A 2703.02(a) has been renumbered Env-A 2702.02(a). This rule will benefit public health and the environment by reducing emissions from hot mix asphalt plants. Also, by approving the July 23, 2013 submission of Env-A 2700 in its entirety, the existing provision limiting visible emissions will be retained in the New Hampshire SIP, thus meeting the requirements of section 110(l) of the CAA. Therefore, EPA is proposing to approve Env-A 2700 into the New Hampshire SIP.

EPA's review of the SIP submittals indicate that all concerns that EPA has expressed to NH DES about these state regulations have been adequately addressed. Concerns on the July 23, 2013 submittals were all in regard to affirmative defense provisions for malfunctions contained in Env-A 2100 and 2400. To address our concerns, NH DES submitted a letter withdrawing these provisions from Env-A 2100 and 2400. See letter to EPA dated July 8, 2013, available in the docket for today's action. The other regulations that we are proposing to approve herein (Env-A 807, 2700, and 2800) do not, even as a matter of state law, contain exceptions for SSM periods or affirmative defense provisions.

III. Proposed Action

EPA is proposing to approve, and incorporate into the New Hampshire SIP, four regulations and part of one regulation, except for affirmative defense provisions in two of the regulations which NH DES has withdrawn. The four regulations include one regulation submitted by the State of New Hampshire on March 31, 2011, Sand and Gravel Sources; Non-Metallic Mineral Processing Plants; Cement and Concrete Sources (Env-A 2800), effective October 1, 2010; and three regulations submitted on July 23, 2013, Particulate Matter and Visible Emissions Standards (Env-A 2100), effective April 23, 2013; Ferrous and Non-Ferrous Foundries, Smelters, and Investment Casting Operations (Env-A 2400), effective April 23, 2013; and Hot Mix Asphalt Plants (Env-A 2700), effective February 16, 2013. As noted earlier, the affirmative defense provisions, which NH DES has withdrawn from its SIP submittals, are not included in this proposed approval action and are contained in state law only in Env-A 2103.03 and 2405. EPA is also proposing to approve Env-A 807 (“Testing for Opacity of Emissions”), effective October 31, 2002.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is

proposing to incorporate by reference the New Hampshire Code of Administrative Rules stated in section III above. The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov> and/or in hard copy at the appropriate EPA office.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this proposed 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 proposed 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 Clean Air Act; 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 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 9, 2016.

H. Curtis Spalding,
Regional Administrator,
EPA New England.

[FR Doc. 2016-19869 Filed: 8/19/2016 8:45 am; Publication Date: 8/22/2016]