



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2014-0604; FRL-9963-88-Region 1]

Air Plan Approval; VT; Infrastructure State Implementation Plan Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of State Implementation Plan (SIP) submissions from Vermont regarding the infrastructure requirements of the Clean Air Act (CAA or Act) for the 1997 fine particle matter (PM_{2.5}), 1997 ozone, 2006 PM_{2.5}, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO₂), and 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). We also are approving two statutes and one Executive Order submitted by Vermont in support of its demonstration that the infrastructure requirements of the CAA have been met. In addition, we are conditionally approving certain elements of Vermont's submittals relating to prevention of significant deterioration (PSD) requirements. Last, we are updating the priority classification for two of Vermont's air quality control regions for SO₂ based on recent air quality monitoring data collected by the state, which means that a contingency plan for SO₂ is not required. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action is being taken in accordance with the CAA.

DATES: This rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2014-0604. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <http://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

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. Final Action
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

I. Background and Purpose

On March 30, 2017 (82 FR 15671), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Vermont. The NPR proposed approval of infrastructure SIP submissions from the Vermont Department of Environmental Conservation (VT DEC) for the 1997 PM_{2.5},¹ 1997 ozone, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. The state submitted these infrastructure SIPs on the following dates: 1997 PM_{2.5} NAAQS – February 18, 2009; 1997 ozone NAAQS – February 18, 2009; 2006 PM_{2.5} NAAQS – May 21, 2010; 2008 Pb NAAQS – July 29, 2014; 2008 ozone NAAQS – November 2, 2015; 2010 NO₂ NAAQS – November 2, 2015; and 2010 SO₂ NAAQS – November 2, 2015.

EPA's NPR also proposed approval of two statutes and one Executive Order submitted by Vermont in support of its demonstration that the infrastructure requirements of the CAA have been met. In addition, the NPR proposed conditional approval of certain elements of Vermont's submittals relating to PSD requirements. Finally, EPA's NPR proposed to update the

¹ PM_{2.5} refers to particulate matter of 2.5 microns or less in diameter, often referred to as "fine" particles.

classification for two of Vermont's air quality control regions for SO₂ to Priority III, based on recent air quality monitoring data collected by the state.

Other specific requirements of infrastructure SIPs and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. One public comment was received on the NPR. However, the commenter did not mention anything specific in the NPR that we should change or provide a clear explanation based on the CAA why we should proceed any differently than as proposed. For this reason, EPA need not provide any further response. The comment is provided in the docket for this final rulemaking action.

II. Final Action

EPA is approving SIP submissions from Vermont certifying that the state's current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 1997 PM_{2.5}, 1997 ozone, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS, with the exception of certain aspects relating to the state's PSD program which we are conditionally approving. A summary of EPA's actions regarding these infrastructure SIP requirements is contained in Table 1 below.

Table 1: Action taken on VT infrastructure SIP submittals for listed NAAQS

Element	1997 PM _{2.5} and 1997 Ozone	2006 PM _{2.5}	2008 Pb	2008 Ozone	2010 NO ₂	2010 SO ₂
(A): Emission limits and other control measures	A	A	A	A	A	A
(B): Ambient air quality monitoring and data system	A	A	A	A	A	A
(C)1: Enforcement of SIP measures	A	A	A	A	A	A
(C)2: PSD program for major sources and major modifications	A*	A*	A*	A*	A*	A*
(C)3: PSD program for minor sources and minor modifications	A	A	A	A	A	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	PA1	PA1	A	PA2	A	NT
(D)2: PSD	A*	A*	A*	A*	A*	A*
(D)3: Visibility Protection	A	A	A	A	A	A
(D)4: Interstate Pollution Abatement	A	A	A	A	A	A
(D)5: International Pollution Abatement	A	A	A	A	A	A
(E)1: Adequate resources	A	A	A	A	A	A
(E)2: State boards	A	A	A	A	A	A
(E)3: Necessary assurances with respect to local agencies	NA	NA	NA	NA	NA	NA
(F): Stationary source monitoring system	A	A	A	A	A	A
(G): Emergency power	A	A	A	A	A	A
(H): Future SIP revisions	A	A	A	A	A	A
(I): Nonattainment area plan or plan revisions under part D	+	+	+	+	+	+
(J)1: Consultation with government officials	A	A	A	A	A	A
(J)2: Public notification	A	A	A	A	A	A
(J)3: PSD	A*	A*	A*	A*	A*	A*
(J)4: Visibility protection	+	+	+	+	+	+
(K): Air quality modeling and data	A	A	A	A	A	A
(L): Permitting fees	A	A	A	A	A	A
(M): Consultation and participation by affected local entities	A	A	A	A	A	A

In the above table, the key is as follows:

A	Approve
A*	Conditionally approve
+	Not germane to infrastructure SIPs
NA	Not applicable
NT	Not taking action at this time.
PA1	Previously approved (04/10/2017; 82 FR 17124)
PA2	Previously approved (10/13/2016; 81 FR 70631)

As noted in Table 1, we are conditionally approving portions of Vermont’s infrastructure SIP submittals pertaining to PSD-related elements (C)(2), (D)(2), and (J)(3). In addition, EPA is removing the following provisions from Title 40 of the CFR: §§52.2373, 52.2374(a), and 52.2382(a)(1), (2), (4), and (5), for reasons discussed in the NPR. Although the NPR also proposed removal of 40 CFR 52.2374(b), we are not taking final action with respect to that paragraph today.

EPA is also approving and incorporating into the Vermont SIP one statute, 10 V.S.A. section 554, “Powers,” that was included in Vermont’s November 2015 infrastructure SIP submittal for the 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. We are also approving and incorporating in the Vermont SIP one statute, 10 V.S.A. section 563, “Confidential records; penalty,” and an Executive Order, 09-11 “Executive Code of Ethics,” which were included in a November 21, 2016 supplemental letter to the Vermont infrastructure SIP submissions; this letter is included in the docket for this action.

Last, we are updating the classification at 40 CFR 52.2371 for the Champlain Valley Interstate and Vermont Intrastate air quality control regions for sulfur dioxide to Priority III, based on recent air quality monitoring data collected by the state, which, by operation of 40 CFR 51.152(c), relieves Vermont of the requirement to have a contingency plan for sulfur dioxide.

As noted above, EPA is conditionally approving aspects of Vermont's SIP revision submittals pertaining to the state's PSD program. The outstanding issues with the PSD program concern the lack of SIP-approved requirements (1) to include NO_x and VOC as precursor pollutants to ozone in defining a "significant" increase in actual emissions from a source of air contaminants, and (2) that define a method for determining the amount of PSD increments available to a new or modified major source.

On May 23, 2017, Vermont submitted to EPA a SIP submittal intended to address the above mentioned deficiency in the state's PSD program. EPA will evaluate this submittal in a separate action, and the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving it. If EPA disapproves the submittal, the conditionally approved aspect or aspects of Vermont's PSD program will also be disapproved at that time. If EPA approves the revised PSD program submittal, then the portions of Vermont's infrastructure SIP submittals that were conditionally approved will be fully approved in their entirety and replace the conditional approval in the SIP. In addition, final disapproval of an infrastructure SIP submittal triggers the Federal implementation plan (FIP) requirement under section 110(c).

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of two Vermont statutes and one Vermont Executive Order as described in the

amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through <http://www.regulations.gov>.

IV. 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 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 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).

The Congressional Review Act, 5 U.S.C. 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 action 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. 804(2).

Under section 307(b)(1) of the Clean Air Act, 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 after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 31, 2017.

Deborah A. Szaro,
Acting Regional Administrator,
EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations 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 UU-Vermont

2. In §52.2370:

- a. The table in paragraph (c) is amended by adding the heading entitled “Statutes and Executive Orders” and the entries “10 V.S.A. section 554 of the Vermont Statutes”, “10 V.S.A. section 563 of the Vermont Statutes”, and “Vermont Executive Order 09-11” at the end of the table.
- b. The table in paragraph (e) is amended by adding the entries “Infrastructure SIP for 1997 PM_{2.5} NAAQS”, “Infrastructure SIP for 1997 ozone NAAQS”, “Infrastructure SIP for 2006 PM_{2.5} NAAQS”, “Infrastructure SIP for the 2008 Lead NAAQS”, “Infrastructure SIP for 2008 ozone NAAQS”, “Infrastructure SIP for the 2010 NO₂ NAAQS”, and “Infrastructure SIP for the 2010 SO₂ NAAQS” at the end of the table.

The additions read as follows:

§52.2370 Identification of plan.

* * * * *

(c) * * *

EPA-Approved Vermont Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanations
**	*	*	*	**
Statutes and Executive Orders				
10 V.S.A. section 554 of the Vermont Statutes	Powers	11/02/2015	[insert date of publication in the Federal Register], [insert Federal Register citation]	Provides the Secretary of ANR with power to adopt, amend and repeal rules, implementing provisions of 10 VSA Chapter 23, Air Pollution Control.
10 V.S.A. section 563 of the Vermont Statutes	Confidential records; penalty	11/21/2016	[insert the date of publication in the Federal Register], [insert Federal Register citation]	Confidential records furnished to or obtained by the secretary concerning air contaminant sources are for confidential use of the secretary, with penalties for violation.
Vermont Executive Order 09-11	Executive Code of Ethics	11/21/2016	[insert date of publication in the Federal Register], [insert Federal Register citation]	Prohibits VT Executive Branch appointees from taking any action in any particular matter in which he or she has either a conflict of interest or the appearance of a conflict of interest, until such time as the conflict is resolved.

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(e) * * *

Vermont Non-Regulatory

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanations
**	*	*	*	**
Infrastructure SIP for 1997 PM _{2.5} NAAQS	Statewide	02/18/2009	[insert date of publication in the Federal Register], [insert Federal Register citation]	Approved submittal, except for certain aspects relating to PSD which were conditionally approved.
Infrastructure SIP for 1997 ozone NAAQS	Statewide	02/18/2009	[insert date of publication in the Federal Register], [insert Federal Register citation]	Approved submittal, except for certain aspects relating to PSD which were conditionally approved.
Infrastructure SIP for 2006 PM _{2.5} NAAQS	Statewide	05/21/2010	[insert date of publication in the Federal Register], [insert Federal Register citation]	Approved submittal, except for certain aspects relating to PSD which were conditionally approved.
Infrastructure SIP for the 2008 Lead NAAQS	Statewide	07/29/2014	[insert date of publication in the Federal Register], [insert Federal Register citation]	Approved submittal, except for certain aspects relating to PSD which were conditionally approved.
Infrastructure SIP for 2008 ozone NAAQS	Statewide	11/02/2015	[insert date of publication in the Federal Register], [insert Federal Register citation]	Approved submittal, except for certain aspects relating to PSD which were conditionally approved.
Infrastructure SIP for the 2010 NO ₂ NAAQS	Statewide	11/02/2015	[insert date of publication in the Federal Register], [insert Federal Register citation]	Approved submittal, except for certain aspects relating to PSD which were conditionally approved.

Infrastructure SIP for the 2010 SO ₂ NAAQS	Statewide	11/02/2015	[insert date of publication in the Federal Register], [insert Federal Register citation]	Approved submittal, except for certain aspects relating to PSD which were conditionally approved.
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3. In §52.2371, revise the table to read as follows:

§52.2371 Classification of regions.

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Air quality control region	Pollutant				
	Particulate matter	Sulfur oxides	Nitrogen dioxide	Carbon monoxide	Ozone
Champlain Valley Interstate	II	III	III	III	III
Vermont Intrastate	II	III	III	III	III

§52.2373 [Removed and Reserved]

4. Section 52.2373 is removed and reserved.

§52.2374 [Amended]

5. Section 52.2374 is amended by removing and reserving paragraph (a).

6. Section 52.2376 is added to read as follows:

§52.2376 Identification of plan-conditional approvals.

(a) *Conditional approvals.* (1) 1997 fine particulate (PM_{2.5}) National Ambient Air Quality Standards (NAAQS): The 110(a)(2) infrastructure SIP submitted on February 18, 2009, is

conditionally approved for Clean Air Act sections 110(a)(2)(C), (D)(i)(II), and (J) only as it relates to the aspect of the PSD program pertaining to adding NO_x and VOC as precursor pollutants to ozone in defining a “significant” increase in actual emissions from a source of air contaminants, and defining a method for determining the amount of PSD increments available to a new or modified major source. On November 21, 2016, the State of Vermont supplemented this submittal with a commitment to address these requirements for PSD.

(2) 1997 Ozone (NAAQS): The 110(a)(2) infrastructure SIP submitted on February 18, 2009, is conditionally approved for Clean Air Act sections 110(a)(2)(C), (D)(i)(II), and (J) only as it relates to the aspect of the PSD program pertaining to adding NO_x and VOC as precursor pollutants to ozone in defining a “significant” increase in actual emissions from a source of air contaminants, and defining a method for determining the amount of PSD increments available to a new or modified major source. On November 21, 2016, the State of Vermont supplemented this submittal with a commitment to address these requirements for PSD.

(3) 2006 PM_{2.5} NAAQS: The 110(a)(2) infrastructure SIP submitted on May 21, 2010, is conditionally approved for Clean Air Act sections 110(a)(2)(C), (D)(i)(II), and (J) only as it relates to the aspect of the PSD program pertaining to adding NO_x and VOC as precursor pollutants to ozone in defining a “significant” increase in actual emissions from a source of air contaminants, and defining a method for determining the amount of PSD increments available to a new or modified major source. On November 21, 2016, the State of Vermont supplemented this submittal with a commitment to address these requirements for PSD.

(4) 2008 Lead NAAQS: The 110(a)(2) infrastructure SIP submitted on July 29, 2014, is conditionally approved for Clean Air Act sections 110(a)(2)(C), (D)(i)(II), and (J) only as it

relates to the aspect of the PSD program pertaining to adding NO_x and VOC as precursor pollutants to ozone in defining a “significant” increase in actual emissions from a source of air contaminants, and defining a method for determining the amount of PSD increments available to a new or modified major source. On November 21, 2016, the State of Vermont supplemented this submittal with a commitment to address these requirements for PSD.

(5) 2008 Ozone NAAQS: The 110(a)(2) infrastructure SIP submitted on November 2, 2015, is conditionally approved for Clean Air Act sections 110(a)(2)(C), (D)(i)(II), and (J) only as it relates to the aspect of the PSD program pertaining to adding NO_x and VOC as precursor pollutants to ozone in defining a “significant” increase in actual emissions from a source of air contaminants, and defining a method for determining the amount of PSD increments available to a new or modified major source. On November 21, 2016, the State of Vermont supplemented this submittal with a commitment to address these requirements for PSD.

(6) 2010 Nitrogen Dioxide NAAQS: The 110(a)(2) infrastructure SIP submitted on November 2, 2015, is conditionally approved for Clean Air Act sections 110(a)(2)(C), (D)(i)(II), and (J) only as it relates to the aspect of the PSD program pertaining to adding NO_x and VOC as precursor pollutants to ozone in defining a “significant” increase in actual emissions from a source of air contaminants, and defining a method for determining the amount of PSD increments available to a new or modified major source. On November 21, 2016, the State of Vermont supplemented this submittal with a commitment to address these requirements for PSD.

(7) 2010 Sulfur Dioxide NAAQS: The 110(a)(2) infrastructure SIP submitted on November 2, 2015, is conditionally approved for Clean Air Act sections 110(a)(2)(C), (D)(i)(II), and (J) only as it relates to the aspect of the PSD program pertaining to adding NO_x and VOC as precursor

pollutants to ozone in defining a “significant” increase in actual emissions from a source of air contaminants, and defining a method for determining the amount of PSD increments available to a new or modified major source. On November 21, 2016, the State of Vermont supplemented this submittal with a commitment to address these requirements for PSD.

(b) [Reserved]

§52.2382 [Amended]

7. In §52.2382:

- a. Remove paragraphs (a)(1), (2), (4), and (5).
- b. Redesignate paragraph (a)(3) as paragraph (a)(1).
- c. Add reserved paragraph (a)(2).

[FR Doc. 2017-13055 Filed: 6/26/2017 8:45 am; Publication Date: 6/27/2017]