



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0576; FRL-9963-72-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Permits, Approvals, and Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Maryland. This revision pertains to Maryland's administrative procedures for the issuance, denial, and appeal of permits issued by the Maryland Department of the Environment (MDE). This action is being taken under the Clean Air Act (CAA).

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2016-0576 at <https://www.regulations.gov>, or via email to miller.linda@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, 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. 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 <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814-2117, or by e-mail at talley.david@epa.gov.

SUPPLEMENTARY INFORMATION: On February 22, 2016, the State of Maryland through the MDE formally submitted amendments to Maryland’s general administrative provisions related to CAA permitting as a revision to Maryland’s SIP.

I. Background

The CAA’s New Source Review (NSR) programs are preconstruction review and permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA. The NSR programs of the CAA include a combination of air quality planning and air pollution control technology program requirements. Briefly, section 109 of the CAA requires EPA to promulgate primary national ambient air quality standards (NAAQS) to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit to EPA for approval a SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Pursuant to section 110, each

SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect air quality-related values (such as visibility) in national parks and other areas; to assure that appropriate emissions controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resources; and, to ensure that any decision to increase air pollution is made only after full public consideration of the consequences of the decision. Section 172 of the CAA requires a permit program in areas which are not attaining the NAAQS, and section 173 provides the specific requirements for that permit program.

MDE's February 22, 2016 SIP submittal consists of revisions to regulations under section 26.11.02 (Permits, Approvals, and Registration) of the Code of Maryland Regulations (COMAR) which EPA has previously approved into the Maryland SIP. The purpose of the revisions is to incorporate amended state statutory requirements¹ into the Maryland SIP. The revisions are related to MDE's administrative processes for permit issuance and denial. Specifically, the revisions eliminate the "contested case" process and the Office of Administrative Hearings' (OAH) adjudicatory hearing process for major permits, and substitute direct judicial review. Additionally, the revisions expand standing for challenges to those major permits, and include additional public notice requirements for certain sources. The Maryland statutory requirements were incorporated into MDE's implementing regulations under COMAR 26.11.02 as described below, and submitted to EPA for approval into the Maryland SIP.

II. Summary of SIP Revision and EPA Analysis

¹ See S.B. 1065, Acts of 2009; H.B. 554 and H.B. 95, Acts of 2013.

Maryland's SIP revision includes several amended administrative provisions under COMAR 26.11.02 (Permits, Approvals, and Registration). Specifically, 26.11.02.07 (Procedures for Denying, Revoking, or Reopening and Revising a Permit or Approval), 26.11.02.11 (Procedures for Obtaining Permits to Construct Certain Significant Sources), and 26.11.02.12 (Procedures for Obtaining Approvals of PSD Sources and NSR Sources, Certain Permits to Construct, and Case-by-Case MACT Determinations in Accordance with 40 CFR part 63, Subpart B) have been revised as follows.

Under the currently approved SIP, COMAR 26.11.02.07, denials and approvals of permits to construct, State operating permits, and State-only enforceable portions of title V operating permits are considered "final actions" subject to judicial review if the permittee did not request a hearing before the OAH and MDE pursuant to the "contested case process." In MDE's February 22, 2016 SIP submittal, MDE submitted for inclusion in the Maryland SIP a revised version of COMAR 26.11.02.07 which provides for a separate process for denials of permits to construct. Under the revised 26.11.02.07, denials of permits to construct immediately constitute "final determinations" which are subject to direct judicial review (without requiring permittees to seek review through the OAH), pursuant to the revised procedures for major permits in the revised COMAR 26.11.02.11 described below.

MDE's February 22, 2016 SIP submittal also includes a number of revisions MDE made to COMAR 26.11.02.11, which contains the procedures for processing permits to construct for "significant" sources. This section applies to modifications at sources: a) for which a state operating permit is required; b) which are subject to new source performance standards (NSPS) at 40 CFR part 60, national emission standards for hazardous air pollutants (NESHAPS) at 40

CFR part 61, or Prevention of Significant Deterioration (PSD) requirements at 40 CFR part 52.21; c) which, after control, will discharge 25 tons per year or more of a pollutant regulated under Environment Article, Title 2, of the Annotated Code of Maryland; and d) of lead which will discharge 5 or more tons of elemental lead per year. *See* COMAR 26.11.02.11A(1,2).

COMAR 26.11.02.11 was previously in the Maryland SIP. The revisions made include a minor change to the public participation processes for sources that trigger NSPS under 40 CFR part 60 but do not trigger NSR requirements, enhanced public notification provisions which require MDE to notify elected officials within a 1-mile radius of a source subject to the expanded public participation requirements of permit proceedings, eliminated the contested case process for significant permits, and instituted direct judicial review in circuit court for parties wishing to contest such permits. Additionally, MDE also included a revised version of COMAR 26.11.02.12 which included minor revisions, clarifying that Regulation .12 only applies to NSR and PSD permit approvals, case-by-case approvals pursuant to 40 CFR part 63 for air toxic sources, and permits to construct which are not subject to COMAR 26.11.02.11.

EPA's review of MDE's February 22, 2016 SIP submittal finds it consistent with all applicable requirements of the CAA and its implementing regulations. The COMAR public notice requirements meet or exceed the requirements of 40 CFR 51.160 and 51.161. Additionally, the revisions are approvable under section 110 of the CAA (specifically section 110(a)(2)(A) and (C) and section 173 for NSR programs). Under section 110(a)(2)(C), the SIP must include a program to enforce the emission limits and control measures in a state's SIP (as required by section 110(a)(2)(A)) and must also contain a program to regulate modification/construction of sources so that the NAAQS are achieved. Section 173 requires the permits program for nonattainment NSR and requires states to have a SIP with a permit program that ensures sources

are required to comply with certain things like stringent emission limitations (i.e., lowest achievable emission rates) and offsets. While having a permits program in the SIP that addresses denial or revocation of permits and addresses permit appeals does not address the required substance of a NSR program, these provisions do make the NSR program enforceable, and therefore EPA finds the SIP submission and revisions to COMAR 26.11.02 approvable under CAA sections 173 and 110(a)(2)(A) and (C). In addition, because none of the revisions to COMAR 26.11.02 will affect emissions of pollutants from sources and are largely administrative in nature, EPA finds that none of the revisions to COMAR 26.11.02 will interfere with reasonable further progress, any NAAQS, or any other applicable requirements in the CAA. Thus, EPA finds the submittal is approvable for section 110(l) of the CAA.

III. Proposed Action

EPA is proposing to approve MDE's February 22, 2016 SIP submittal as a revision to the Maryland SIP as the SIP submittal meets requirements in the CAA under sections 110 and 173. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this proposed rulemaking, 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, EPA is proposing to incorporate by reference the MDE rules regarding permit issuance and denial as described in Section II of this preamble. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and/or at the EPA Region III Office (please contact the person identified in the "For Further Information Contact" section of

this preamble for more information).

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. 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 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 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, this proposed rule, related to Maryland's administrative processes for preconstruction permitting, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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.

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

Dated: June 2, 2017.

Cecil Rodrigues,
Acting Regional Administrator,
Region III.

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