



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2015-0189; FRL-9964-52-Region 6]

Promulgation of Air Quality Implementation Plans; State of Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan; Revision of Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise the Federal Implementation Plan (FIP) that was published in the Federal Register on September 27, 2016, to address certain regional haze and visibility transport requirements under the Federal Clean Air Act (the Act, or CAA) for the State of Arkansas. The specific portions of the Arkansas Regional Haze FIP that the EPA is proposing to revise are the compliance dates for the nitrogen oxide (NO_x) emission limits for the Entergy White Bluff Plant (White Bluff) Units 1 and 2, the Entergy Independence Plant (Independence) Units 1 and 2, and the American Electric Power (AEP) Flint Creek Unit 1. EPA is proposing to extend the compliance dates for the NO_x emission limits for these five electric generating units (EGUs) by 21 months to January 27, 2020.

DATES: *Comments:* Comments must be received on or before September 22, 2017.

Public Hearing: We are holding an information session – for the purpose of providing additional information and informal discussion for our proposal, and a public hearing – to accept oral comments into the record, as follows:

Date: Wednesday, August 23, 2017

Time: Information Session: 2:00 p.m. – 2:45 p.m.

Public hearing: 3:00 p.m. – 7:00 p.m. (including break from 5:00 p.m. – 5:30 p.m.)

Please see the **ADDRESSES** section for the location of the hearing in North Little Rock, AR.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2015-0189, at <http://www.regulations.gov> or via email to R6AIR_ARHaze@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. 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 Dayana Medina, (214) 665-7241; medina.dayana@epa.gov. 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>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the 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).

Hearing location: Arkansas Public Service Commission, Public Service Commission Building, 1000 Center Street, Little Rock, Arkansas 72201-4314.

The public hearing will provide interested parties the opportunity to present information and opinions to us concerning our proposal. Interested parties may also submit written comments, as discussed in the proposal. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. We will not respond to comments during the public hearings. When we publish our final action, we will provide written responses to all significant oral and written comments received on our proposal. To provide opportunities for questions and discussion, we will hold an information session prior to the public hearing. During the information session, EPA staff will be available to informally answer questions on our proposed action. Any comments made to EPA staff during an information session must still be provided orally during the public hearing, or formally in writing within 30 days after completion of the hearings, in order to be considered in the record. At the public hearings, the hearing officer may limit the time available for each commenter to address the proposal to three minutes or less if the hearing officer determines it to be appropriate. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations. Any person may provide written or oral comments and data pertaining to our proposal at the public hearings. Verbatim English language transcripts of the hearing and written statements will be included in the rulemaking docket.

FOR FURTHER INFORMATION CONTACT: Dayana Medina, (214) 665-7241;

medina.dayana@epa.gov.

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

I. Background

On September 27, 2016, we published a rule titled “Promulgation of Air Quality Implementation Plans; State of Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan” (Arkansas Regional Haze FIP or FIP) addressing certain requirements of the Regional Haze Rule and interstate visibility transport.¹ Among other things, the final FIP established NO_x emission limits for White Bluff, Independence, and Flint Creek, and required compliance with these emission limits within 18 months of the effective date of our final action (i.e., April 27, 2018).

The State of Arkansas, through the Arkansas Department of Environmental Quality (ADEQ), submitted a petition to the EPA dated November 22, 2016, seeking reconsideration and an administrative stay of specific portions of the final Arkansas Regional Haze FIP pursuant to section 307(d)(7)(B) of the CAA and section 705 of the Administrative Procedure Act (APA). Petitions dated November 23, 2016, seeking reconsideration and administrative stay of the FIP were also submitted by Entergy Arkansas Inc., Entergy Mississippi Inc., and Entergy Power LLC (collectively “Entergy”) and the Arkansas Electric Cooperative Corporation (AECC), which are owners of Flint Creek, White Bluff, and Independence. The Energy and Environmental Alliance of Arkansas (EEAA), which is an ad-hoc association that has members who own or operate Flint Creek, White Bluff, and Independence, also submitted a petition dated November 28, 2016,

¹ 81 FR 66332; *see also* 81 FR 68319 (October 4, 2016) (correction).

seeking reconsideration and administrative stay of the FIP.² The petitioners raised a number of issues, including EPA's decision to shorten the compliance dates for the NO_x emission limits for Flint Creek, White Bluff, and Independence from the proposed 3 years to 18 months in the final FIP without specifically requesting comment on the shorter 18-month compliance dates. Entergy, AECC, and EEAA also stated in their petitions for reconsideration and administrative stay that the 18-month NO_x compliance dates required by the FIP are infeasible and do not allow sufficient time for the owners and operators of the facilities to develop, plan, obtain prevention of significant deterioration (PSD) permits, install, tune, and test the low NO_x burner control equipment that is needed to comply with the NO_x emission limits.

In a letter dated April 14, 2017, EPA announced the convening of a proceeding to reconsider the appropriate compliance dates for the NO_x emission limits for Flint Creek, White Bluff, and Independence.³ EPA determined that the petitioners raised objections to the NO_x compliance timeframes that were impracticable to raise during the comment period and that are of central relevance to the rule under 307(d)(7)(B) of the Clean Air Act (CAA). EPA also published a notice in the Federal Register on April 25, 2017, administratively staying the effectiveness of the 18-month NO_x compliance dates in the FIP for a period of 90 days.⁴ In that action, we also stated that reconsideration would allow for additional public comment on the 18-month NO_x compliance deadlines. We are proposing to revise the NO_x compliance deadlines for the 5 affected units as part of the reconsideration process and requesting comment on our proposed decision to extend these dates by 21 months.

² Please see the docket for this rulemaking for a copy of the petitions for reconsideration and administrative stay submitted by ADEQ, Entergy, AECC, and EEAA.

³ See letter dated April 14, 2017, regarding "Convening a Proceeding for Reconsideration of Final Rule, 'Promulgation of Air Quality Implementation Plans; State of Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan,' published September 7, 2016. 81 Fed. Reg. 66332." A copy of this letter is included in the docket, Docket ID No. EPA-R06-OAR-2015-0189.

⁴ 82 FR 18994.

We also note that in a letter dated June 7, 2017, the State committed to develop and submit to EPA this summer a Regional Haze SIP revision to replace our FIP, which would include NO_x requirements for the EGUs. Our action today revising the compliance dates for NO_x does not preclude the State from submitting and EPA acting on a SIP revision addressing that element. As we have previously stated,⁵ we remain committed to work with the State on a SIP revision that would replace our FIP. We are proposing a revision to our FIP at this time to address the impending April 27, 2018 NO_x compliance deadlines required by the FIP for Flint Creek, White Bluff, and Independence, prior to the anticipated SIP submittal by the State and to provide the owners of the units with regulatory certainty regarding their compliance deadlines.

II. Petitions for Reconsideration of the NO_x Compliance Deadlines and EPA's

Proposed Action

We have carefully reviewed and taken into consideration the petitions for reconsideration and administrative stay submitted by the State of Arkansas, Entergy, AECC, and EEAA regarding the 18-month compliance date for the NO_x emission limits at Flint Creek Unit 1, White Bluff Units 1 and 2, and Independence Units 1 and 2. We have determined that the petitions for reconsideration raise certain arguments related to the 18-month NO_x compliance dates that have merit, provide site-specific information regarding the infeasibility of an 18-month compliance date, and warrant proposing a revision to the FIP with regard to the 18-month NO_x compliance deadlines.

The State of Arkansas, Entergy, AECC, and EEAA stated in their petitions that EPA proposed a 3-year NO_x compliance deadline for the affected units and that we did not indicate in the proposed rulemaking that we were considering a shorter compliance date. Additionally, the

⁵ 81 FR 66333.

petitioners stated that EPA failed to provide an opportunity to comment on the owners' ability to comply with a shortened compliance date. EEAA pointed out that if EPA would have afforded the owners and operators adequate notice and opportunity to comment on the shortened NO_x compliance deadlines, they would have provided comment and supporting information concerning why an 18-month compliance deadline is inadequate. The petitioners also argued that because we did not provide notice and an opportunity to comment on shortened compliance deadlines, the 18-month NO_x compliance deadlines are not a logical outgrowth of the FIP proposal.

We agree with the petitioners that our FIP proposal did not specifically state that we were soliciting public comment on shorter NO_x compliance dates for the five units. We recognize that the wording in our proposed rulemaking was not clear with respect to this issue, but our intent was to solicit public comment on all aspects of our FIP proposal. This includes even those aspects of our FIP proposal for which we did not specifically state that we were soliciting public comment. However, in consideration of the petitioners' comments, we are proposing to extend the NO_x compliance dates for the 5 affected units and providing notice and opportunity for public comment on the proposed revisions to the compliance dates. Other issues raised by the petitioners concerning the inadequacy of an 18-month NO_x compliance deadline are discussed in the subsections that follow.

A. Petitioners' Claims Regarding the Infeasibility of 18-Month NO_x Compliance Deadlines

Entergy's petition, which was incorporated by reference by both AECC and EEAA, asserted that the comments submitted by environmental groups,⁶ on which we based our decision to shorten the NO_x compliance deadlines for the five units, relied on an expert report and a 10-year-old vendor association report that did not take into account site-specific considerations that could affect the installation and deployment time of low NO_x burner controls.⁷ EEAA also asserted that the 10-year old vendor association report did not take into account permitting considerations, a company's internal project development and approval process, site-specific factors, or reliability concerns. Entergy and EEAA asserted that the 18-month compliance deadline for installation of the low NO_x burner and separated overfire air equipment at White Bluff and Independence is not feasible because it does not allow the owners and operators sufficient time to prepare and submit an air permit application, obtain the permit through the public notice and participation process, comply with the affected companies' internal planning and prudence review procedures, complete a request for proposal process, select a vendor, procure equipment, schedule outages, install the control equipment, conduct equipment tuning and testing, and train staff on the operation of the control equipment. AECC also asserted in its petition that the 18-month NO_x compliance deadlines for the five units are extremely difficult, if not impossible, to meet and are unprecedented.

Entergy and EEAA pointed out that the installation of the NO_x control equipment requires that the company first develop a prevention of significant deterioration (PSD) permit application for each facility and submit to ADEQ. Entergy's petition explains that the processing

⁶ See comments submitted by Earthjustice, National Parks Conservation Association, and Sierra Club, dated August 7, 2015, on the Arkansas Regional Haze FIP proposal. These comments can be found in Docket No. EPA-R06-OAR-2015-0189.

⁷ AECC and EEAA's petitions address Flint Creek, White Bluff, and Independence. Entergy's petition focuses on White Bluff and Independence, but many of the arguments raised by Entergy are also applicable to Flint Creek.

of the permit application by ADEQ is expected to take no less than 6 – 8 months, but could take longer depending on a number of factors outside of the company's control. The State's permitting process involves a public notice and participation process, and the length of time it takes to issue the permit is dependent upon the volume and complexity of the comments received as well as on ADEQ's resources. Additionally, Entergy pointed out that any member of the public could appeal issuance of the final permit to the Arkansas Pollution Control and Ecology Commission and, absent additional regulatory proceedings, could result in an automatic stay of the permit pending resolution of the appeal. Entergy stated in its petition that it has obtained the necessary PSD permit for installation of the NO_x control equipment at White Bluff, but is still in the process of developing the PSD permit application for Independence.

Entergy and EEAA also explained in their petitions that the affected companies have internal planning procedures that affect their schedule for installation of the NO_x controls. These internal planning procedures include risk and prudence reviews, as well as a process for obtaining competitive bids from multiple vendors. Entergy asserted that these internal planning procedures are in place to attempt to ensure cost recovery, and that circumventing these procedures places the owners at risk of making investments that the Arkansas Public Service Commission later determines are not in the public interest and therefore not eligible for cost recovery. Entergy explained that once a vendor is selected, the company must negotiate the final contract and that it would then take the vendor approximately 8 months to design and fabricate the equipment. Each unit will then have to be taken offline for approximately 6 – 7 weeks for installation of the control equipment. Entergy explained that after installation of the control equipment, the company must conduct boiler tuning, performance verification testing, a final phase of fine-tuning of the equipment, staff training, and must validate operating configurations

to determine which combinations result in the best load profile. In its petition for reconsideration, Entergy stated that in light of these site-specific considerations, the owners and operators need 3 years to install the control equipment and comply with their NO_x emission limits. Entergy and EEAA stated that requiring the affected units to comply with shorter NO_x compliance deadlines would force the owners to undertake an accelerated schedule that involves non-compliance with company prudence procedures and increases the cost and financial risk incurred by the owners, with no guarantee that the units will actually be able to meet their NO_x emission limits by the shorter compliance date.

AECC asserted in its petition that a 3-year NO_x compliance deadline is as expeditiously as practicable for the affected units, especially taking into consideration that the four units at White Bluff and Independence are within the same regional transmission organization system that would be affected by outages related to installation of the NO_x control equipment. AECC also asserted that a NO_x compliance schedule less than 3 years would require an accelerated construction schedule such that the controls could not be optimally scheduled to minimize the cost of replacement energy and system reliability could potentially be compromised. EEAA expressed similar concerns, stating that an 18-month compliance schedule for the 5 affected units is inadequate for the installation of the controls, in particular when required for multiple units that represent a significant amount of baseload generating capacity within the State.

B. EPA's Assessment of Petitioners' Claims and EPA's Proposed Action

We agree with the petitioners that the comments submitted by environmental groups on which we based our decision to shorten the NO_x compliance deadlines for the five units relied on an expert report and a 10-year-old vendor association report that did not take into account site-specific considerations that could affect the installation and deployment time of low NO_x burner

equipment. Since our proposed rulemaking did not specifically state a range of compliance dates that we were soliciting comment on for the NO_x emission limits for the five units, we accept the owners' claims that they did not anticipate that we might finalize shorter compliance dates and therefore did not comment on site-specific factors that affect their ability to meet shorter compliance dates. We also acknowledge that the owners of the affected units raise a valid point that the compliance date needs to account for the PSD permitting process required for the installation of the NO_x control equipment, including the possibility of delays in the regulatory permitting process that could affect the owners' ability to meet an 18-month compliance deadline.

We acknowledge that we were not aware of and thus could not take into consideration the companies' internal planning and prudence review procedures when we shortened the NO_x compliance deadlines. We find that the steps and processes Entergy, AECC, and EEAA discussed in their petitions that must be taken by the owners and operators of the affected units in order to install and begin operating the NO_x control equipment are reasonable and warrant proposing to extend the NO_x compliance dates for the affected units. It is not our intent to require a compliance timeframe that could force the owners to expedite the planning, installation, and deployment of the NO_x control equipment in such a way that would require omitting company planning procedures and other important processes the owners and operators have in place for projects such as this. We also believe it is prudent to establish compliance deadlines that allow the installation of the NO_x controls to be optimally scheduled so as to not compromise system reliability, especially taking into consideration that four of the affected units are within the same regional transmission organization system. Entergy, AECC, and EEAA asserted that 3 years are needed to develop, plan, permit, install, tune, and test the equipment at the affected

units, which is consistent with the compliance deadline we proposed in our April 8, 2015 FIP proposal.⁸ Additionally, as we noted in the “Background” section of this proposed rulemaking, we published a notice in the Federal Register on April 25, 2017, administratively staying the effectiveness of the 18-month NO_x compliance deadlines in the FIP for a period of 90 days as part of our reconsideration process for the NO_x compliance deadlines.⁹ To also account for the 90 day stay of the effectiveness of these NO_x compliance deadlines, we are proposing to extend the NO_x compliance deadlines for Flint Creek Unit 1, White Bluff Units 1 and 2, and Independence Units 1 and 2 by a total of 21 months to January 27, 2020. We believe this is consistent with the requirement under the CAA section 169A(b)(2) and (g)(4) and the Regional Haze Rule under section 51.308(e)(1)(iv) to install and operate BART as expeditiously as practicable, but in no event later than 5 years after approval of the implementation plan revision.

III. Summary of Proposed Action

After carefully considering the petitions for reconsideration of the NO_x compliance deadlines submitted by Arkansas, Entergy, AECC, and EEAA, we are proposing to revise the Arkansas Regional Haze FIP by extending the NO_x compliance deadlines for Flint Creek, White Bluff, and Independence. After carefully considering the information presented by the petitioners and to account for the 90 day stay of the effectiveness of these NO_x compliance deadlines, we are proposing to extend the NO_x compliance deadlines for Flint Creek Unit 1, White Bluff Units 1 and 2, and Independence Units 1 and 2 by a total of 21 months to January 27, 2020. Upon finalization of this proposed action, the reconsideration process for the 18-month NO_x compliance deadlines will conclude.

⁸ 80 FR 18944.

⁹ 82 FR 18994.

The revisions to the Arkansas Regional Haze FIP we are proposing at this time are limited to the NO_x compliance dates for the five aforementioned units. We are not proposing to revise any other portions of the FIP in this proposed action. As such, we are not accepting public comment at this time on any issues unrelated to the NO_x compliance dates for these units. However, we note that the reconsideration process under CAA section 307(d)(7)(B) for other portions of the FIP, as discussed in our April 14, 2017 letter, is ongoing.¹⁰ If EPA determines through the ongoing reconsideration process that revisions to other parts of the FIP are warranted, we will propose such revisions in a future rulemaking action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Best available retrofit technology, Incorporation by reference, Intergovernmental relations, Interstate transport of pollution, Nitrogen dioxide, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility.

Dated: June 30, 2017.

Samuel Coleman,
Acting Regional Administrator, Region 6.

¹⁰ See letter dated April 14, 2017, regarding “Convening a Proceeding for Reconsideration of Final Rule, ‘Promulgation of Air Quality Implementation Plans; State of Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan,’ published September 7, 2016. 81 Fed. Reg. 66332.” A copy of this letter is included in the docket, Docket ID No. EPA-R06-OAR-2015-0189.

Title 40, chapter I, of the Code of Federal Regulations is proposed to be 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 E--Arkansas

2. Amend § 52.173 by revising (c) (7) and (25) to read as follows:

§52.173 Visibility protection.

* * * * *

(c) * * *

(c)(7) *Compliance dates for AEP Flint Creek Unit 1 and Entergy White Bluff Units 1 and 2.* The owner or operator of AEP Flint Creek Unit 1 must comply with the SO₂ emission limit listed in paragraph (c)(6) of this section by April 27, 2018, and with the NO_x emission limit listed in paragraph (c)(6) by January 27, 2020. The owner or operator of White Bluff Units 1 and 2 must comply with the SO₂ emission limit listed in paragraph (c)(6) of this section by October 27, 2021, and must comply with the NO_x emission limits listed in paragraph (c)(6) of this section by January 27, 2020.

* * * * *

(c)(25) *Compliance dates for Entergy Independence Units 1 and 2.* The owner or operator of each unit must comply with the SO₂ emission limit in paragraph (c)(24) of this section by October 27, 2021, and with the NO_x emission limits by January 27, 2020.