



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2019-0422; FRL-9997-67-Region 9]

#### **Air Plan Approval; California; Ventura County Air Pollution Control District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO<sub>x</sub>) from natural gas-fired water heaters. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by [**Insert date 30 days after the date of publication in the Federal Register**].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2019-0422 at <https://www.regulations.gov>. For comments submitted at Regulations.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 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://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Robert Schwartz, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3286 or by email at [schwartz.robert@epa.gov](mailto:schwartz.robert@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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**I. The State's Submittal**

A. *What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Revised	Submitted
VCAPCD	74.11	Natural Gas-Fired Water Heaters	5/11/2010	6/21/2011

On July 15, 2011, the EPA determined that the submittal for VCAPCD Rule 74.11 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. *Are there other versions of this rule?*

We approved an earlier version of Rule 74.11 into the SIP on September 24, 1999 (64 FR 51688). The VCAPCD adopted revisions to the SIP-approved version on May 11, 2010, and CARB submitted them to us on June 21, 2011.

C. *What is the purpose of the submitted rule revision?*

Emissions of NO<sub>x</sub> contribute to the production of ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO<sub>x</sub> emissions. The current SIP-approved Rule

74.11 establishes NO<sub>x</sub> emission limits, and certification, compliance, and testing requirements for residential natural gas-fired water heaters sold or installed by anyone in Ventura County. Revisions to the SIP-approved rule include broadening the applicability to any natural gas-fired water heater rated at less than 75,000 Btu/hr<sup>1</sup> (not just residential units), lower NO<sub>x</sub> limits, the addition of NO<sub>x</sub> limits for mobile homes (previously exempt from the rule), and the acceptance of water heaters certified, exclusively, by the South Coast Air Quality Management District (SCAQMD) (in accordance with SCAQMD Rule 1121) as certified for sale or installation in Ventura County. Other rule revisions include additional compliance report documentation related to certification, additional enforcement requirements, and the re-arrangement of and additions to the definitions. The EPA's technical support document (TSD) has more information about this rule.

## **II. The EPA's Evaluation and Action**

### *A. How is the EPA evaluating the rule?*

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require Reasonably Available Control Technology (RACT) for each major source of NO<sub>x</sub> in ozone nonattainment areas classified as Moderate or above (see CAA sections 182(b)(2) and 182(f)). The VCAPCD regulates an ozone nonattainment area

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<sup>1</sup> British thermal unit (Btu): the amount of heat required to raise the temperature of one pound of water from 59°F to 60°F at one atmosphere.

classified as Serious for the 2008 National Ambient Air Quality Standards (NAAQS) (40 CFR 81.305). However, because this rule does not affect major sources, it does not need to implement section 182(b)(2) RACT. While section 182(b)(2) RACT does not apply, the Ventura County ozone nonattainment area is subject to the SIP requirement to provide for the implementation of all reasonably available control measures (RACM) and for attainment of the NAAQS.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub> Supplement), 57 FR 55620, November 25, 1992.
5. "Alternative Control Techniques Document – NO<sub>x</sub> Emissions from Industrial/Commercial/Institutional (ICI) Boilers," EPA 453/R-94-022, March 1994.
6. "Alternative Control Techniques Document – NO<sub>x</sub> Emissions from Process Heaters (Revised)," EPA-453/R-93-034, September 1993.

B. *Does the rule meet the evaluation criteria?*

We have reviewed VCAPCD Rule 74.11 and determined that it is consistent with CAA requirements and relevant guidance regarding enforceability, RACM, and SIP revisions. With respect to our evaluation for compliance of this SIP revision with CAA section 110(l), we note that the 2016 Ventura County Air Quality Management Plan relies on the emissions reductions from VCAPCD Rule 74.11, as amended in 2010, as part of the strategy to attain the 2008 ozone NAAQS by the applicable attainment date.<sup>2</sup> The TSD has more information on our evaluation.

C. *EPA recommendations to further improve the rule*

The TSD includes recommendations for the next time the local agency modifies the rule.

D. *Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the Federal Register]**. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

### **III. 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 VCAPCD rule described in Table 1 of this preamble.

The EPA has made, and will continue to make, these materials available through

<https://www.regulations.gov> and at the EPA Region IX Office (please contact the person

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<sup>2</sup> See VCAPCD, Final 2016 Ventural County Air Quality Management Plan (February 14, 2017), table 3-1 on page 33.

identified in the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble for more information).

#### **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, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed 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 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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 the 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping

requirements.

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

Dated: July 23, 2019.

Michael Stoker,  
Regional Administrator,  
Region IX.

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