



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2019-0469; FRL-10005-95-Region 3]

Approval and Promulgation of Air Quality Implementation Plans;

Pennsylvania; Regulatory Updates to Allegheny County Nonattainment New Source Review (NNSR) Permitting Requirements for 2012 PM_{2.5} National Ambient Air Quality Standard (NAAQS)

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 Commonwealth of Pennsylvania, on behalf of the Allegheny County Health Department (ACHD), on May 23, 2019. This revision pertains to ACHD's amendments of the ACHD Rules and Regulations, Article XXI (Air Pollution Control) to implement Federal nonattainment new source review (NNSR) provisions for the 2012 annual fine particulate matter (PM_{2.5}) national ambient air quality standard (NAAQS). 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-2019-0469 at <https://www.regulations.gov>, or via email to opila.marycate@epa.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. 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: Amy Johansen, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2156. Ms. Johansen can also be reached via electronic mail at johnasen.amy@epa.gov.

SUPPLEMENTARY INFORMATION: On May 23, 2019, the Commonwealth of Pennsylvania formally submitted, on behalf of ACHD, a SIP revision to the Pennsylvania SIP. This SIP revision amends ACHD Rules and Regulations, Article XXI (Air Pollution Control), sections 2102.06 (Major Sources Locating in or Impacting a Nonattainment Area), and 2101.20 (Definitions), herein referred to as Revision 90A. This proposed SIP revision establishes that emissions of volatile organic compounds (VOC) and ammonia are precursors to PM_{2.5} for new and modified major sources emitting PM_{2.5} in Allegheny County, Pennsylvania; establishes a significant impact level for PM_{2.5}; proposes emission offset ratios for emissions of VOC and ammonia as PM_{2.5} precursors; and amends relevant definitions. Revision 90A was adopted by

ACHD and became effective March 3, 2019.¹

For more information related to EPA's proposed approval of SIP Revision 90A, please refer to EPA's Technical Support Document (TSD), located in Docket ID No. EPA-R03-OAR-2019-0469 at <https://www.regulations.gov>.

I. Background

A. 2012 PM_{2.5} NAAQS

Airborne particulate matter with a nominal aerodynamic diameter of 2.5 micrometers or less are considered to be “fine particles,” and are also known as PM_{2.5}. Fine particles in the atmosphere are made up of a complex mixture of components, including sulfate, nitrate, ammonium, elemental carbon, organic compounds, and inorganic material. There are substantial health effects associated with exposure to PM_{2.5} emissions. Epidemiological studies have shown a significant correlation between elevated PM_{2.5} levels and premature mortality. Other important health effects associated with PM_{2.5} exposure include aggravation of respiratory and cardiovascular disease, lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems. Individuals particularly sensitive to PM_{2.5} exposure include older adults, people with heart and lung disease, and children.

EPA has revised the NAAQS for PM_{2.5} on multiple occasions, most recently in 2012. On December 14, 2012, the annual primary standard for PM_{2.5} was lowered from 15 micrograms per meter cubed ($\mu\text{g}/\text{m}^3$) to 12 $\mu\text{g}/\text{m}^3$. See 78 FR 3087 (January 15, 2013). The existing 24-hour standards (primary and secondary) were retained at 35 $\mu\text{g}/\text{m}^3$, as was the annual secondary

¹ On April 22, 2019, ACHD submitted a “revised” requested revision to the Pennsylvania Department of Environment Protection (PADEP). This revised submittal was necessary due to its initial submittal to EPA, on March 6, 2019, having a typographical error. The offset ratio for VOC in Article XXI, section 2102.06.3.B.4 was printed as “1.1” when, instead, it should have been printed as “1:1.” ACHD corrected the typographical error and published a new Notice of Amendment in the local newspaper describing the error, prior to formally resubmitting it to PADEP on April 22, 2019 and to EPA on May 23, 2019.

standard of 15 $\mu\text{g}/\text{m}^3$. Upon promulgation of the 2012 $\text{PM}_{2.5}$ NAAQS, EPA formally classified all of Allegheny County, Pennsylvania as moderate nonattainment for the 2012 annual $\text{PM}_{2.5}$ standard. See 80 FR 2206 (January 15, 2015).

B. *Purpose of SIP Revision 90A*

For areas designated as nonattainment for one or more NAAQS, the SIP must include preconstruction permit requirements for new or modified major stationary sources of such nonattainment pollutant(s), commonly referred to as “Nonattainment New Source Review.” See CAA section 172(c)(5).

ACHD’s Revision 90A revises NNSR permit requirements for major sources of $\text{PM}_{2.5}$.

Specifically, ACHD’s Article XXI has been amended to implement additional provisions pertaining to $\text{PM}_{2.5}$ precursors, as promulgated in EPA’s rule entitled Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements (2016 Implementation Rule). See 81 FR 58010 (August 24, 2016).

As required by EPA’s 2016 Implementation Rule, which implements the D.C. Circuit court’s January 2013 decision in *NRDC v. EPA*,² areas classified as nonattainment for any $\text{PM}_{2.5}$ NAAQS are required to comply with the parts of CAA subpart 4 section 189(e)³ that require the control of major sources of PM_{10} precursors (and hence under the court decision, $\text{PM}_{2.5}$ precursors) “except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the standard in the area.” The 2016 Implementation Rule amended the definitions of (1) regulated NSR pollutant with regard to $\text{PM}_{2.5}$ precursors; (2) major stationary source with regard to major sources locating in $\text{PM}_{2.5}$ nonattainment areas classified as moderate and serious; and (3) significant with regard to emissions of $\text{PM}_{2.5}$

² 706 F.3d 428 (D.C. Cir. 2013).

³ This requirement was codified in 40 CFR 51.165(a)(13). See 81 FR 58010 (August 24, 2016).

precursors.

C. EPA's Findings of Failure to Submit

On April 6, 2018, EPA issued its final Findings of Failure to Submit (Findings) to three states, which included Allegheny County, Pennsylvania. See 83 FR 14759. In its Findings, EPA found that Allegheny County failed to submit a timely revision to their SIP as required to satisfy CAA requirements for implementation of the 2012 PM_{2.5} NAAQS. EPA's Findings apply to states with overdue SIP revisions for areas initially designated as nonattainment and classified as moderate for the 2012 PM_{2.5} NAAQS on April 15, 2015.

Specific to this rulemaking action is ACHD's failure to submit revisions to its NNSR requirements. ACHD was required to submit its NNSR SIP revision to EPA for approval by October 15, 2016. See 83 FR 14759 (April 6, 2018). ACHD did not meet this deadline, hence EPA's issuance of its April 6, 2018 Findings, which became effective as of May 7, 2018. As a result of EPA's Findings, ACHD was given 18 months after the effective date of EPA's Findings to submit all applicable moderate area requirements or the imposition of sanctions would occur for the affected moderate nonattainment area, the Allegheny County, Pennsylvania nonattainment area.⁴

ACHD's Article XXI, section 2102.06 incorporates by reference the NNSR requirements of 25 Pa. Code Chapter 127, subchapter E. However, because Pennsylvania's regulations (25 Pa. Code Chapter 127, subchapter E) do not contain the necessary 2012 PM_{2.5} NAAQS precursor specific provisions, ACHD cannot simply rely on them via incorporation by reference. Therefore, proposed SIP Revision 90A updates ACHD's regulations to include the required PM_{2.5} NNSR provisions in response to EPA's 2016 Implementation Rule requirements. See 81 FR 58010

⁴ EPA's April 6, 2018 Findings became effective on May 7, 2018, therefore, the 18-month sanctions clock for ACHD to submit its NNSR SIP revision ended on November 7, 2019.

(August 24, 2016) and 40 CFR 51.165.

With this proposed rulemaking action, ACHD has met its obligation under EPA's April 6, 2018 Findings to submit a NNSR SIP revision prior to November 7, 2019. See 83 FR 14759. On July 24, 2019, via letter, EPA deemed ACHD's May 23, 2019 SIP submittal administratively and technically complete, in accordance with the requirements of 40 CFR part 51, Appendix V, which in turn stopped the sanctions clock.⁵

II. Summary of SIP Revision and EPA Analysis

A. Summary of SIP Revision

ACHD's Board of Health adopted changes to sections 2102.06 and 2101.20 of Article XXI on January 9, 2019, which subsequently became effective on March 3, 2019. PADEP submitted SIP Revision 90A to EPA for inclusion in the Allegheny County portion of the Pennsylvania SIP on May 23, 2019, via the EPA State Planning electronic Collaboration System (SPeCS).

PADEP is the Governor's designee for submitting official revisions of the Allegheny County portion of the Pennsylvania SIP to EPA, and ACHD is the local agency responsible for regulating and permitting the construction and modification of stationary sources within Allegheny County, Pennsylvania. Article XXI contains Allegheny County's NNSR permit program applicable to new and modified major sources emitting PM_{2.5} and PM_{2.5} precursors.

The Allegheny County portion of the Pennsylvania SIP currently contains a version of Article XXI (Air Pollution Control) that was approved into the SIP on March 30, 2015. See 80 FR 16570.

For areas designated as nonattainment for one or more NAAQS, the SIP must include preconstruction permit requirements for new or modified major stationary sources of such

⁵ A copy of the completeness letter can be found in the Docket for this rulemaking action. Please see Docket ID No. EPA-R03-OAR-2019-0469 at <https://www.regulations.gov>.

nonattainment pollutant(s), commonly referred to as NNSR. CAA 172(c)(5). Article XXI addresses NNSR permit requirements for major sources of PM_{2.5}. ACHD's Revision 90A has been amended to implement additional provisions pertaining to precursors, as promulgated in EPA's final 2016 Implementation Rule.⁶

B. *EPA's Analysis*

Under EPA's 2016 Implementation Rule, which implements the D.C. Circuit court's January 2013 decision in *NRDC v. EPA*,⁷ areas classified as nonattainment for any PM_{2.5} NAAQS are required to comply with the parts of CAA subpart 4 section 189(e)⁸ that require the control of major stationary sources of PM₁₀ precursors (and hence under the court decision, PM_{2.5} precursors) "except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the standard in the area." As mentioned previously, the 2016 Implementation Rule amended the definitions of (1) regulated NSR pollutant with regard to PM_{2.5} precursors; (2) major stationary source with regard to major sources locating in PM_{2.5} nonattainment areas classified as moderate and serious; and (3) significant with regard to emissions of PM_{2.5} precursors. Article XXI is subject to these new regulatory requirements. Allegheny County is classified as a moderate nonattainment area for the 2012 PM_{2.5} NAAQS.⁹ The major source permitting threshold for a moderate PM_{2.5} nonattainment area is 100 tons per year (tpy) of direct PM_{2.5} or any PM_{2.5} precursor, and 70 tpy for a serious PM_{2.5} nonattainment area.¹⁰

⁶ See 81 FR 58010 (August 24, 2016).

⁷ 706 F.3d 428 (D.C. Cir. 2013).

⁸ This requirement was codified in 40 CFR 51.165(a)(13). See 81 FR 58010 (August 24, 2016).

⁹ On January 15, 2015, EPA designated all of Allegheny County as moderate nonattainment for the 2012 annual PM_{2.5} standard. See 80 FR 2206.

¹⁰ While Allegheny County has never been classified as a serious nonattainment area for any PM_{2.5} NAAQS, ACHD has revised Article XXI to include the lower emissions threshold of 70 tpy for direct PM_{2.5} and all four PM_{2.5} precursors.

EPA evaluated the revised portions of Article XXI to determine if the revisions meet current applicable requirements for a PM_{2.5} NNSR permit program. Section 2102.06 - (1) contains revisions to clarify that Article XXI applies to major polluting facilities that will emit PM_{2.5} or its precursors in areas designated as nonattainment for PM_{2.5}; (2) the definition of “major facility” has been updated to include a 70 tpy emissions threshold for PM_{2.5} and all precursors to PM_{2.5}; (3) the definition of “regulated NSR pollutant” has been updated to include SO₂, VOC, and ammonia in all PM_{2.5} nonattainment areas; (4) revisions were made to the definition of “significant” to include emission rates for PM_{2.5} at 10 tpy and emission rates for PM_{2.5} precursors as follows: 40 tpy of SO₂, 40 tpy of VOC, 40 tpy of ammonia, and 40 tpy of NO_x; and (5) revisions were made to clarify that under Article XXI, “significance level(s) shall mean “significant air quality impact” as defined under Article XXI. EPA finds these revisions approvable. Section 2102.06(b)(3) - Emission Offsets, establishes offset ratios for VOC and ammonia at a ratio of 1:1 for flue emissions and fugitive emissions in Allegheny County. EPA finds the addition of offset ratios to be approvable, as they match what is already in Article XXI for PM_{2.5} and NO_x and SO₂. Section 2101.20 – Definitions, was amended to add “significant air quality impact” levels for PM_{2.5} at 0.2µg/m³ for the annual averaging time and 1.2 µg/m³ for the 24 hour averaging time. ACHD’s annual averaging time is more stringent than what EPA requires in 40 CFR 51.165(b)(2), therefore, EPA finds this more stringent requirement approvable.

III. Proposed Action

EPA's review of this material indicates that ACHD’s May 23, 2019 SIP submittal is approvable and meets the requirements of 40 CFR 51.165 and are in accordance with CAA section 110. EPA is proposing to approve the May 23, 2019 submittal, which included revisions to ACHD

Rules and Regulations, Article XXI (Air Pollution Control), sections 2102.06 (Major Sources Locating in or Impacting a Nonattainment Area), and 2101.20 (Definitions), as a revision to the Allegheny County portion of the Pennsylvania SIP. 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 document, 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 ACHD Rules and Regulations, Article XXI (Air Pollution Control), sections 2102.06 (Major Sources Locating in or Impacting a Nonattainment Area), and 2101.20 (Definitions) discussed in Section II of this preamble.

EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and 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);
- 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 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, pertaining to NNSR requirements under the 2012 PM_{2.5} NAAQS, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 21, 2020.

Cosmo Servidio,
Regional Administrator,
Region III.

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