



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA-R01-OAR-2020-0374; FRL-10018-74-Region 1]

Approval and Promulgation of Air Quality Implementation Plan; Mashantucket Pequot Tribal Nation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves the Mashantucket Pequot Tribal Nation's (MPTN or the Tribe) Tribal Implementation Plan (TIP) under the Clean Air Act (CAA) to regulate air pollution within the exterior boundaries of the Tribe's reservation. The TIP is one of two CAA regulatory programs that comprise the Tribe's Clean Air Program (CAP). EPA approved the Tribe for treatment in the same manner as a State (Treatment as State or TAS) for purposes of administering New Source Review (NSR) and Title V operating permits under the CAA on July 10, 2008. In this action we act only on those portions of MPTN's CAP that constitute a TIP containing severable elements of an implementation plan under CAA section 110(a). The TIP includes permitting requirements for major and minor sources of air pollution. The purpose of the TIP is to enable the Tribe to attain and maintain the National Ambient Air Quality Standards (NAAQS) within the exterior boundaries of its reservation by establishing a federally enforceable preconstruction permitting program.

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-2020-0374. All documents in the docket are listed on the <https://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 <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 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 and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Patrick Bird, Air Permits, Toxics and Indoor Programs Branch, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: 05-2, Boston, MA, 02109-0287. Telephone: 617-918-1287. Fax: 617-918-0287. Email: Bird.Patrick@epa.gov.

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

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I. Background and Purpose

On September 9, 2020 (85 FR 55628), EPA published a Notice of Proposed Rulemaking (NPRM) for a TIP submitted by the MPTN for approval under section 110 of the CAA. The TIP addresses attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) by establishing a federally enforceable preconstruction permitting program within the exterior boundaries of the Tribe's reservation. It also allows for sources that otherwise would have the potential to emit hazardous air pollutants or regulated NSR pollutants in amounts at or above those for major sources to request federally enforceable permit limitations that restrict emissions to below those of a major source.

The MPTN is an Indian Tribe federally recognized in 1983 by Congressional legislation (Pub. L. 98-134, sec. 9, Oct. 1st, 1983 97 Stat 855, Title 25 U.S.C.A. 1751-1760). The Secretary of the Interior recognizes the "Mashantucket Pequot Tribe of Connecticut" (73 FR 18553, 18554, April 4, 2008). MPTN's CAP was established by Tribal Council Resolution in 2005 (TCR102600-01 of 02). On July 10, 2008, EPA determined that the Tribe is eligible for TAS for these purposes.

The MPTN formally submitted the applicable elements of its TIP to EPA Region 1 on December 7, 2018. Having found that the MPTN is eligible for TAS to implement these regulatory programs, EPA is now approving the Tribe's TIP. We intend to act on the Tribe's title V operating permit program in separate notice and comment processes, as appropriate.

The rationale for EPA's proposed approval of the MTPN TIP is explained in the NPRM and will not be restated here. No adverse public comments were received on the NPRM.

II. Response to Comments

EPA received three comments during the comment period, all of which supported EPA's proposed action. As such, these comments do not require further response to finalize the action as proposed.

III. Final Action

EPA is approving the MPTN's TIP under the Clean Air Act to regulate air pollution within the exterior boundaries of the Tribe's reservation. In this action we act only on those portions of MPTN's CAP that constitute a TIP containing severable elements of an implementation plan under CAA section 110(a). The TIP includes permitting requirements for major and minor sources of air pollution. Specifically, we are approving the following sections of the MPTN's air quality regulations. Title 12, Subtitle 12.1, § 2 – Applicability (with effective date); Title 12, Subtitle 12.1, § 4 – Definitions; and Title 12, Subtitle 12.2 – New Source Review – MPTN TIP.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the MPTN rules discussed in section I. and III. of this preamble. EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 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 Clean Air Act, the Administrator is required to approve a TIP 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 TIP submissions, EPA's role is to approve tribal choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this final action merely approves tribal law as meeting Federal requirements and does not impose additional requirements beyond those imposed by tribal 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).

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. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties, 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

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 49

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: February 10, 2021.

Deborah Szaro,
Acting Regional Administrator,
EPA Region 1.

Part 49 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 49 – INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

1. The authority citation for part 49 continues to read as follows:

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

Subpart D – Implementation Plans for Tribes – Region 1

2. Subpart D of Part 49 is amended by adding an undesignated center heading and § 49.202, after § 49.201, to read as follows:

Implementation Plan for the Mashantucket Pequot Tribal Nation.

§ 49.202 Identification of Plan

(a) *Purpose and scope.* This section contains the implementation plan for the Mashantucket Pequot Tribal Nation. This plan consists of permitting requirements for major and minor sources of air pollution submitted by the Tribe on December 7, 2018, applicable to lands within the exterior boundaries of the Mashantucket Pequot Tribal Nation's reservation.

(b) *Incorporation by reference.* (1) Material listed in paragraph (c) of this section was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the Federal Register. Entries in paragraph (c) of this section with EPA approval dates after January 6, 2021, will be incorporated by reference in the next update to the TIP compilation.

(2) EPA Region 1 certifies that the rules/regulations provided by EPA in the TIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated tribal rules/regulations which have been approved as part of the Tribal Implementation Plan as of January 6, 2021.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region 1 Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912 and at the National Archives

and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov, or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(c) *EPA-approved regulations.*

Table 1 to Paragraph (c)--EPA-Approved Mashantucket Pequot Tribal Nation Regulations

Tribal Citation	Title/Subject	Tribal Effective Date	EPA Approval Date	Explanations
Resolution Number TCR101118-04 of 06 of the Mashantucket Pequot Tribe	RESOLUTION NUMBER TCR101118-04 of 06 OF THE MASHANTUCKET PEQUOT TRIBAL COUNCIL, THE GOVERNING BODY OF THE MASHANTUCKET PEQUOT TRIBE, Approves the MPTN Air Quality Program, Submission of the Tribal Implementation Plan and Requests Delegation of the Title V Program	10/11/2018	[Insert date of publication in the <u>Federal Register</u>] [Insert <u>Federal Register</u> citation]	
MPTN Land Use Regulations, Title 12 Air Quality Regulations	MPTN Land Use Regulations, Title 12 Air Quality Regulations	10/11/2018	[Insert date of publication in the <u>Federal Register</u>] [Insert <u>Federal Register</u> citation]	MPTN only submitted, and EPA only approved, applicable TIP References: Subtitle 12.1, § 2 “Applicability” and § 4 “Definitions”; and Subtitle 12.2 “New Source Review – MPTN TIP”