



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2020-0580; FRL-11047-01-R5]

**Air Plan Approval; Ohio; Proposed Approval of the Muskingum
River SO₂ Attainment Plan**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, under the Clean Air Act (CAA), a revision to the Ohio State Implementation Plan (SIP) intended to provide for attainment of the 2010 primary, health-based 1-hour sulfur dioxide (SO₂) national ambient air quality standard (NAAQS or standard) for the Muskingum River SO₂ nonattainment area. This SIP revision (hereinafter referred to as Ohio's Muskingum River SO₂ attainment plan or plan) includes Ohio's attainment demonstration and other attainment planning elements required under the CAA. EPA proposes to find that Ohio has appropriately demonstrated that the plan provides for attainment of the 2010 1-hour primary SO₂ NAAQS in the Muskingum River, Ohio nonattainment area and that the plan meets the other applicable requirements under the CAA. EPA is also proposing to incorporate by reference Ohio's Director's Final Findings and Orders (DFFOs), issued on May 23, 2023, into the Ohio SIP. The DFFOs set forth additional requirements at Globe Metallurgical (Globe) to verify appropriate source characterization for

modeling purposes.

DATES: 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-R05-OAR-2020-0580 at <https://www.regulations.gov>, or via email to arra.sarah@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: Gina Harrison, Attainment

Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6956, harrison.gina@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures.

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

I. Background.

On January 18, 2022¹, EPA partially approved and partially disapproved Ohio’s SO₂ plan for the Muskingum River area submitted on April 3, 2015, and October 13, 2015, and supplemented on June 23, 2020. EPA’s January 18, 2022, final rule provided an explanation of the applicable provisions in the CAA and the measures and limitations identified in Ohio’s attainment plan to satisfy these provisions. EPA approved the base year emissions inventory and affirmed that the new source review requirements for the area had previously been met. In addition to an attainment demonstration, the January 18, 2022, final rule addressed the requirements for meeting reasonable further progress (RFP) toward attainment of the NAAQS, reasonably available control measures (RACM) and reasonably available control technology (RACT), enforceable emission limitations and control measures, base-year and projection-year emission inventories, and contingency measures.

¹ 87 FR 2555 (effective February 17, 2022).

Ohio's June 23, 2020, submittal was based on, among other things, an agreement that the Globe facility would purchase a tract of property to the north that was modeled to be impacted by SO₂ emissions from the facility. Globe decided not to purchase the land as anticipated by the attainment plan. As the attainment demonstration relied on the inclusion of this property within Globe's fence line, failure to obtain the land rendered the attainment demonstration invalid, and EPA disapproved Ohio's attainment demonstration for the Muskingum River SO₂ nonattainment area. This disapproval started sanctions clocks for this area under CAA section 179(a)-(b), including a requirement for 2-for-1 offsets for any major new sources or major modifications 18 months after the effective date of this action, and highway funding sanctions 6 months thereafter, as well as initiated an obligation for EPA to promulgate a Federal Implementation Plan within 24 months, under CAA section 110(c).

II. EPA's Evaluation of Ohio's Submittal.

Ohio submitted a supplement to the attainment demonstration on June 24, 2022, to substitute new measures in lieu of the land acquisition. The supplement identifies a modification to the Shop 1 baghouse at the Globe facility that added a vertical release exhaust point at the roof monitor. Ohio also modified the air quality modeling analysis to include the use of site-specific meteorological data instead of National Weather Service data collected 20 miles off-site.

On July 28, 2022, in accordance with Ohio's June 23, 2020,

DFFOs, Globe submitted the final report for validation testing conducted on January 11 and 13, 2022. This testing was required to verify the accuracy of the mass balance calculations used to determine compliance with the SO₂ emissions limits. EPA and Ohio EPA agree that the validation testing did verify the accuracy of the mass balance calculations, but the flows measured during the validation testing were different from those used in the air quality modeling that serves as the basis for the attainment demonstration. In addition, during the testing a damper blade was stuck in the open position. While neither affected the mass balance nor the validation testing results, the flow and temperature measurements and the amount of dilution air added after the measurement point may have been affected, which raised questions about the appropriateness of certain modeling parameters used in the source characterization and modeling.

As a result, Ohio submitted additional supplemental information on May 23, 2023, including revised DFFOs for Globe that supersede the June 23, 2020, DFFOs. The new DFFOs retain the SO₂ emission limits set forth in the previous DFFOs but require additional testing within one year of the effective date of the DFFOs to verify the source characterization parameters used in the air quality modeling, including the flow and temperature measurements and the amount of dilution air added after the measurement point. The new DFFOs also require: submittal of a testing protocol to be approved by Ohio EPA in

consultation with EPA; continuous monitoring of the damper position and installation of a sensor to detect and record when the damper is not fully closed; automated alarms if the damper is open longer than fifteen minutes; daily visual checks of the damper; reporting of malfunctions; prompt action to respond to any alarms, malfunctions, or inspections which indicate that the damper may be open outside of normally intended operations. The new DFFOs also require associated recordkeeping and reporting. If the values measured in the source characterization testing are determined by Ohio EPA to be sufficiently different from the values used in the current modeling, such that it would be reasonably expected that updated modeling may no longer demonstrate attainment of the standard, the DFFOs require that Globe submit a revised attainment demonstration with updated modeling demonstrating attainment using updated parameters. In that event, Globe will be required to submit an updated modeling protocol, which will be reviewed and approved by Ohio EPA in consultation with EPA.

The 2023 DFFOs will remain in effect until requirements demonstrating attainment of the standard (including procedures for determining compliance) are incorporated into Ohio Administrative Code Chapter 3745-18, the rules are approved into Ohio's SIP, and the requirements are incorporated into the facility's title V operating permit.

III. What Action is EPA Taking?

EPA is proposing to approve Ohio's SIP attainment plan

submission for the Muskingum River SO₂ nonattainment area, which the state previously submitted to EPA on April 3, 2015, October 13, 2015, and June 23, 2020, and supplemented on June 24, 2022, July 28, 2022, and May 23, 2023. This SO₂ attainment plan included Ohio's attainment demonstration for this area. The attainment plan also addressed requirements for emission inventories, RACT/RACM, RFP, and contingency measures. Ohio has previously addressed requirements regarding nonattainment area new source review. Because Ohio's submission provides an appropriate testing requirement to confirm the modeling, EPA has determined that Ohio's SO₂ attainment plan for the Muskingum River SO₂ nonattainment area meets the applicable requirements of CAA sections 110, 172, 191, and 192.

A key element of Ohio's attainment plan is Ohio's revised DFFOs issued to Globe on May 23, 2023. Among other requirements, Ohio's DFFOs retain SO₂ emission limits for Globe set forth in the 2020 DFFOs as a matrix of limits based on 26 separate operating scenarios at the two baghouses, where each of the 26 scenarios was modeled to demonstrate attainment and maintenance of the SO₂ standard. As part of this proposed approval of Ohio's attainment plan for this area, EPA would approve Ohio's May 23, 2023, DFFOs for the Globe facility into the SIP. These DFFOs supersede the previous 2020 DFFOs, retain the SO₂ limits and other requirements set forth in the 2020 DFFOs, and require additional testing, monitoring, and confirmation of certain flow parameters for verification of

source modeling characterization. EPA finds that these requirements are sufficient for the required attainment plan demonstration.

By this action, EPA is proposing to codify its approval of both Ohio's May 23, 2023, DFFOs and Ohio's attainment plan for the Muskingum River SO₂ nonattainment area.

IV. Incorporation by Reference.

In this rule, 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 Ohio's DFFOs issued to Globe Metallurgical, effective May 23, 2023, discussed in section II. of this preamble. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 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. This action disapproves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state 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 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those

areas of Indian country, the 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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

Ohio EPA did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not

required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 15, 2023.

Debra Shore,
Regional Administrator, Region 5.

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