



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2023-0201; FRL-10839-02-R7]

Air Plan Partial Approval and Partial Disapproval; Missouri; Revision to Sulfur Dioxide Control Requirements for Lake Road Generating Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to partially approve and partially disapprove revisions to the State Implementation Plan (SIP) submitted by the State of Missouri on February 17, 2022. In its submission, the Missouri Department of Natural Resources (MoDNR) requested that revisions to a 2016 Administrative Order on Consent (AOC) for controlling sulfur dioxide (SO₂) emissions at the Lake Road power plant (hereinafter referred to as "2016 AOC") be approved in the SIP. This final action amends the SIP to establish more stringent fuel oil sulfur content limits, remove SO₂ emission limits that are no longer needed due to the strengthened fuel oil sulfur requirements, and streamline reporting requirements. The approved SIP changes meet the requirements of the Clean Air Act (CAA). This final action also disapproves a new provision in the AOC that would potentially allow Lake Road to exceed the fuel oil sulfur content limits on a temporary basis.

DATES: This final rule is effective on **[insert date 30 days**

after date of publication in the Federal Register].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2023-0201. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, i.e., confidential business information (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 through www.regulations.gov or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Allie Donohue, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7986; email address: donohue.allie@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA.

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I. What is Being Addressed in this Document?

The EPA is partially approving and partially disapproving a SIP revision submitted by the State of Missouri on February 17,

2022. In its submission, MoDNR requested that AOC No. APCP-2015-118 between MoDNR and Evergy (formerly Kansas City Power & Light) submitted in 2016, and amended in 2018 (Amendment #1), be replaced with Amendment #2 to the AOC in the SIP. The EPA is approving these SIP revisions, with the exception of Amendment #2 paragraph 12.A. The approved revisions meet the requirements of the Clean Air Act. The EPA is disapproving Amendment #2 paragraph 12.A. because this provision potentially allows Lake Road to burn fuel oil with a sulfur content greater than the sulfur content limit of 15 parts per million (ppm) on a temporary basis. Paragraph 12.A. is severable from Amendment #2 because it is a new paragraph that was not previously included in the 2016 AOC or Amendment #1, and it is not approved in the SIP. The EPA proposed to partially approve and partially disapprove this submission on April 26, 2023 (88 FR 25309). The EPA's analysis of the State's requested SIP revisions can be found in section II of the proposed rule and in more detail in the technical support document (TSD) included in this docket.

II. Have the Requirements for Approval of a SIP Revision Been Met?

With respect to the portions of the submittal which EPA is approving, the State submission met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from November 1, 2021, to December 9, 2021 and received no comments. In addition, as explained above and in

more detail in the TSD which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

As explained in section II of the proposed rule and further in the TSD, the EPA is disapproving Amendment #2 paragraph 12.A.

The EPA received no comments on the proposed rule during the public comment period which opened April 26, 2023, the date of its publication in the *Federal Register*, and closed on May 26, 2023.

III. What Action is the EPA Taking?

The EPA is taking final action to amend the Missouri SIP by partially approving and partially disapproving the State's submittal. Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D, title I of the CAA (CAA sections 171-193) or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanctions clock. The Missouri SIP submission that we are partially disapproving was not submitted to meet either of these requirements. Therefore, this partial disapproval will not trigger mandatory sanctions under CAA section 179. In addition, CAA section 110(c)(1) provides that the EPA must promulgate a Federal Implementation Plan (FIP) within two years after either finding that a State has failed to make a required submission or disapproving a SIP submission in whole or in part, unless the EPA approves a SIP revision correcting the deficiencies within that two-year period. With

respect to our partial disapproval of Missouri's SIP submission, however, we conclude that any FIP obligation resulting from this partial disapproval is satisfied by our determination that there is no deficiency in the SIP to correct. Specifically, we are approving all revisions with the exception of Amendment #2 paragraph 12.A.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri Amendment #2 to Administrative Order on Consent, State effective October 18, 2021, between MoDNR and Evergy related to controlling SO₂ emissions at the Lake Road power plant discussed in section I of this preamble and as set forth below in the amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Also, in this document, as described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions of the EPA-Approved Missouri Administrative Order on Consent and Amendment #1 (State effective September 27, 2018) from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

As described in the amendments to 40 CFR part 52 set forth below, EPA is also removing an outdated reference to the St. Joseph Light and Power So₂ consent agreement (State effective May 21, 2001).

V. Environmental Justice Considerations

The EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within a 2-mile radius of the Lake Road facility Census 2010 Summary Report available on its environmental justice (EJ) screening and mapping tool ("EJSCREEN"). The EPA then compared the data to the State average for each of the demographic groups using 2010 State census data from the United States Census Bureau. The results of this analysis are being provided for informational and transparency purposes. The results of the demographic analysis indicate that, for populations within the 2-mile radius of the Lake Road facility, the percent of people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is less than the national average (16 percent versus 21 percent). Within people of color, the percent of the population that is Black or African American alone is lower than the State average (3 percent versus 12 percent) and the percent of the population that is American Indian/Alaska Native is similar to the State average (1 percent versus 1 percent). The percent of the population that is two or more races is similar to the State average (3 percent versus 3 percent). The percent of people with low income within the 2-

mile radius of the Lake Road facility is higher than the State average (41 percent versus 31 percent).

VI. 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 Clean Air Act 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 Clean Air Act. 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 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 (Pub. L. 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 Clean Air Act.

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."

The air agency 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. The EPA performed an environmental justice analysis, as is described above in the section titled, "Environmental Justice Considerations." The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 52

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

Dated: June 26, 2023.

Meghan A. McCollister,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

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 AA-Missouri

2. In § 52.1320, in the table in paragraph (d):

a. Remove and reserve entries "(17)", "(32)", and "(33)";

and

b. Add entry "(38)" in numerical order.

The addition reads as follows:

§ 52.1320 Identification of plan.

* * * * *

(d) * * *

EPA-Approved Missouri Source-Specific Permits and Orders

Name of source	Order/Permit number	State effective date	EPA Approval date	Explanation
* * * * *				
(38) Kansas City Power and Light - Lake Road Facility	Amendment #2 to Administrative Order on Consent No. APCP-2015-118	10/18/2021	[insert date of publication in the Federal Register], [insert Federal Register citation]	EPA is approving Amendment #2 to AOC No. APCP-2015-118, except for paragraph 12.A.

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