



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2023-0565; FRL- 11415-02-R3]

Air Plan Approval; Pennsylvania; Allegheny County Open Burning Revision and Addition of Mon Valley Air Pollution Episode Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Allegheny County Health Department (ACHD). The revision incorporates into the Pennsylvania SIP, particulate matter emission mitigation requirements for industry operating in the portion of Allegheny County known as the “Mon Valley” during weather-related pollution episodes. It also amends a portion of Allegheny County’s open burning regulation, which was previously incorporated into Pennsylvania’s SIP. EPA is approving this revision to the Allegheny County portion of the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final 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 ID Number EPA-R03-OAR-2023-0565. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., 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 availability information.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-5787. Ms. Schmitt can also be reached via electronic mail at schmitt.ellen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA received a SIP submission from PADEP on August 23, 2023, which EPA subsequently proposed approval of on February 5, 2024 (89 FR 7655). In EPA's notice of proposed rulemaking (NPRM), EPA proposed to approve changes to ACHD Air Pollution Control Rules and Regulations in Article XXI. This SIP revision includes amendments to section 2105.50 regarding open burning, and adds new section 2106.06, which focuses on mitigating particulate matter air pollution episodes in the Mon Valley.

II. Summary of SIP Revision and EPA Analysis

PADEP's August 2023 SIP submission seeks to incorporate into Pennsylvania's SIP a new section (2106.06, Mon Valley Air Pollution Episode) to Allegheny County Article XXI, which focuses on mitigating particulate matter air pollution episodes in the Mon Valley. The SIP submission also seeks to incorporate into the Pennsylvania SIP related changes to Article XXI, section 2105.50, Open Burning.

Article XXI, section 2106.06, Mon Valley Air Episode, is aimed at emission mitigation requirements for industry operating in the portion of the county known as the "Mon Valley" during weather-related pollution episodes.¹ Section 2106.06 applies to the following sources

¹ Section 2106.06(d) defines the Mon Valley Air Pollution Episode Area as including the following municipalities: City of Clairton, City of Duquesne, City of McKeesport, Borough of Braddock, Borough of Braddock Hills, Borough of Chalfant, Borough of Dravosburg, Borough of East McKeesport, Borough of East Pittsburgh, Borough of Elizabeth, Borough of Forest Hills, Borough of Glassport, Borough of Jefferson Hills, Borough of Liberty, Borough of Lincoln, Borough of Munhall, Borough of North Braddock, Borough of Port Vue, Borough of Rankin, Borough of Swissvale, Borough of Turtle Creek, Borough of Versailles, Borough of Wall, Borough of West Elizabeth, Borough of West Mifflin, Borough of White Oak, Borough of Wilmerding, Borough of Whitaker, Elizabeth Township, Forward Township, North Versailles Township, and Wilkins Township. See the technical

located within the prescribed Mon Valley Pollution Episode Area: 1) all major and synthetic minor sources of fine particulate matter (PM_{2.5});² 2) all sources that have combined allowable emissions from all emission units of 6.5 tons or more per year of PM_{2.5}; and 3) all sources that have combined allowable emissions from all emission units of 10 tons per year of PM₁₀.³

Section 2106.06 requires applicable sources to submit a mitigation plan to reduce particulate matter emissions for review and approval by ACHD.⁴ Each applicable source's mitigation plan must include a Mon Valley Air Pollution Watch Phase and a Mon Valley Air Pollution Warning Phase, that the source must be prepared for and follow. Each source's mitigation plan must include procedures for when a Mon Valley Air Pollution Watch or Warning is issued. A Mon Valley Air Pollution Watch shall be issued by ACHD if it is "determined from an air quality forecast that for at least the next 24-hour period atmospheric conditions will exist which indicate that the 24-hour average ambient concentration of PM_{2.5} in one or more of the [Mon Valley] municipalities...is forecasted to exceed" the value of the 24-hour PM_{2.5} NAAQS of 35 micrograms per cubic meter (µg/m³).⁵ ACHD shall issue a Mon Valley Air Pollution Warning if during a rolling 24-hour averaging period, an official monitoring station in an applicable municipality exceeds the Mon Valley PM_{2.5} threshold, 35 µg/m³, and ACHD has determined that atmospheric conditions will continue for the next 24-hour period.

To support the reduction of particulate matter pollution during a Mon Valley Air Pollution Watch or Warning, ACHD is also requesting that EPA incorporate into the SIP

support document (TSD) portion of Pennsylvania's August 23, 2023 Mon Valley Air Pollution Episode SIP submission, section 2.2 Extent of Area, to learn more about how ACHD determined the area of focus within Allegheny County. The SIP submission and incorporated TSD are located in the docket for this proposed rulemaking.

² Definitions of major source and synthetic minor source can be found in ACHD Article XXI, section 2101.20, Definitions.

³ ACHD completed an analysis of the composition of PM_{2.5} in the Mon Valley to determine which sources should be applicable to section 2106.06. It was determined that the majority of excess PM_{2.5} in the Mon Valley is primary in nature and caused by point source emissions from within the area. For additional information, see sections 2.3 and 2.4 of ACHD's TSD which is located in the docket for this proposed rulemaking.

⁴ According to ACHD, as of October 31, 2023, all currently applicable sources have submitted approved mitigation plans.

⁵ Article XXI section 2106.06(c). Article XXI section 2106.06 provides that the "Mon Valley PM_{2.5} threshold level" for purposes of defining a Watch and Warning is the value of the primary 24-hour PM_{2.5} NAAQS.

ACHD's amendment to Article XXI, section 2105.50, Open Burning, which was previously approved into the Commonwealth's SIP.

Other specific requirements of Allegheny County Article XXI section 2106.06 and 2105.50 and the rationale for EPA's action are explained in the NPRM, and will not be restated here.

After review of the August 2023 SIP submission, EPA has determined that the changes to Article XXI are overall SIP strengthening. By incorporating Allegheny County Article XXI section 2106.06 into the Pennsylvania SIP, ACHD adds an additional measure by which the county can help control particulate matter emissions in the Mon Valley, with a relatively quick turn-around time. The amendment to section 2105.50 further supports this measure. This revision will support ACHD's efforts to reduce air pollution emissions in order to minimize the impact on public health.⁶

III. EPA's Response to Comments Received

The public comment period for the NPRM ended on March 6, 2024, and no adverse comments were received. EPA received one comment, which we consider to be vague and non-adverse.

IV. Final Action

For the reasons discussed in detail in the proposed rulemaking and summarized herein, EPA is approving PADEP's August 23, 2023 SIP submission as a revision to the Allegheny County portion of the Pennsylvania SIP.

V. Incorporation by Reference

In this document, 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 Allegheny County Article XXI section 2106.06 and section 2105.50, as described

⁶ Nothing contained in Article XXI section 2106.06 shall impact ACHD's power to issue an Emergency Order pursuant to section 2109.05 of the same Article.

in section II of this preamble. EPA has made, and will continue to make, these materials generally available through 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). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁷

VI. Statutory and Executive Order Reviews

A. General Requirements

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 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 (Pub. L.104-4);

⁷ 62 FR 27968 (May 22, 1997).

- 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); 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;

B. Submission to Congress and the Comptroller General

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. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, 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 amending Allegheny County XXI section 2105.50 regarding open burning, and adding new section 2106.06 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

D. Environmental Justice

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 (E.J.) 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.”

ACHD did not evaluate environmental justice considerations as part of its SIP submission; 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 final rulemaking. Due to the nature of the action being taken here, this rulemaking is expected to have a neutral to positive impact on the air quality of the affected area. 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.

In addition, this final rulemaking amending Allegheny County Article XXI section 2105.50 and adding section 2106.06 of Allegheny County Article XXI to Pennsylvania’s SIP, 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 Commonwealth, 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, Particulate matter, Reporting and recordkeeping requirements.

Adam Ortiz,
Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

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 NN—Pennsylvania

2. In § 52.2020, the table in paragraph (c)(2) is amended by revising the entry “Open Burning” and by adding the entry “Mon Valley Air Pollution Episode.”

§ 52.2020 Identification of plan.

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(c) ***

(2) ***

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
* * * * * 2105.50	* * * * * Open Burning	11/25/2021	[insert date of publication in the	

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
			Federal Register], [insert Federal Register citation]	
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2106.06	Mon Valley Air Pollution Episode	11/25/2021	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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[FR Doc. 2024-06940 Filed: 4/3/2024 8:45 am; Publication Date: 4/4/2024]