



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### [EPA-R10-OAR-2011-0884, FRL-9841-1]

# Approval and Promulgation of Implementation Plans; Oregon: Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter and 2008 Ozone National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving the State Implementation Plan (SIP) submittals from the State of Oregon to demonstrate that the SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for fine particulate matter (PM<sub>2.5</sub>) on July 18, 1997, and October 17, 2006, and for ozone on March 12, 2008. The EPA is finding that the Federally-approved provisions currently in the Oregon SIP meet the CAA infrastructure requirements for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and the 2008 ozone NAAQS. The EPA is also finding that the Federally-approved provisions currently in the Oregon SIP meet the interstate transport requirements of the CAA related to prevention of significant deterioration for the 2008 ozone NAAQS, and related to visibility for the 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS. This action does not approve any additional provisions into the Oregon SIP but is a finding that the current provisions of the Oregon SIP are adequate to satisfy the above-mentioned infrastructure elements required by the CAA.

**DATES:** This action 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-R10-OAR-2011-0884. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information the disclosure of which 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 either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at EPA Region 10, Office of Air, Waste and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. The EPA requests that you contact the person 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 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kristin Hall at (206) 553-6357, [hall.kristin@epa.gov](mailto:hall.kristin@epa.gov), or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we", "us" or "our" are used, it is intended to refer to the EPA. Information is organized as follows:

**Table of Contents**

- I. Background
- II. Response to Comment
- III. Action
- IV. Statutory and Executive Order Reviews

## **I. Background**

On March 21, 2013, the EPA proposed to approve the September 25, 2008, December 23, 2010, August 17, 2011, and December 19, 2011 SIP submittals from the State of Oregon to demonstrate that the SIP meets the requirements of CAA sections 110(a)(1) and (2) for the NAAQS promulgated for fine particulate matter (PM<sub>2.5</sub>) on July 18, 1997, and October 17, 2006, and for ozone on March 12, 2008 (78 FR 17304). In our March 21, 2013, notice of proposed rulemaking (NPR), we proposed to approve the SIP submittals and to find that the Federally-approved provisions currently in the Oregon SIP meet the following CAA section 110(a)(2) infrastructure elements for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We also proposed to find that the Federally-approved provisions currently in the Oregon SIP meet the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to prevention of significant deterioration for the 2008 ozone NAAQS, and CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS. An explanation of the CAA requirements and implementing regulations that are met by these SIP submittals, a detailed explanation of the submittals, and the EPA's reasons for approving the submittals and making the above-described findings were provided in the NPR, and will not be restated here. The public comment period for this proposed rule ended on April 22, 2013. The EPA received one comment on the NPR.

## **II. Response to Comment**

Comment: The commenter stated that “the Oregon SIP does not currently contain emission limits and other provisions which ensure that Oregon will attain and maintain the 2006 PM<sub>2.5</sub> NAAQS,” and should be disapproved. In support of this conclusion, the commenter

described the potential impact of future PM<sub>2.5</sub> emissions from Coyote Island Terminal, LLC's proposed Morrow Pacific Project in Oregon. The commenter included an air quality modeling analysis of the Morrow Pacific Project's potential future ambient PM<sub>2.5</sub> impacts, commissioned by the commenter's client. The analysis predicted that the Morrow Pacific Project will emit PM<sub>2.5</sub> in quantities that will cause violations of the 2006 PM<sub>2.5</sub> NAAQS. The commenter concluded that "if the Oregon Department of Environmental Quality issues an air pollution permit to the Coyote Island terminal, it will demonstrate that the Oregon SIP currently lacks emission limits and other measures to ensure attainment and maintenance of the 2006 PM<sub>2.5</sub> NAAQS." The commenter further stated that "[s]hould the Oregon Department of Environmental Quality deny the air pollution permit for the Coyote Island coal terminal, then these comments would no longer be applicable." The commenter did not identify any particular regulatory deficiencies in the Oregon SIP. The commenter's conclusion that the Oregon SIP should be disapproved is contingent upon the outcome of a future permitting decision.

Response: CAA section 110(a)(2)(A) requires that a SIP "include enforceable emission limitations and other control measures, means, or techniques... as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter." The EPA notes that the commenter did not identify a specific absence of "enforceable emission limitations or other control measures" necessary to ensure attainment of the PM<sub>2.5</sub> NAAQS. Rather, the commenter's conclusion that the Oregon infrastructure SIP for PM<sub>2.5</sub> is deficient is contingent upon a particular decision being made under the existing SIP-approved regulations that the commenter anticipates will be applied in the case of the proposed Morrow Pacific Project, if that project is issued an air quality permit in the

future.

The EPA disagrees with the commenter's conclusion that the Oregon SIP must, or can be disapproved contingent upon a particular, potential, future permitting decision. Rather, our analysis of the Oregon SIP as discussed in the NPR, set forth the EPA's basis for concluding that the current Federally-approved Oregon SIP meets the requirements of CAA section 110(a)(2)(A) for purposes of the 2006 PM<sub>2.5</sub> NAAQS. In our analysis we stated that the State of Oregon generally regulates emissions of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors through its SIP-approved New Source Review (NSR) permitting programs, in addition to other rules and control programs. The EPA most recently approved revisions to the State's major and minor NSR permitting programs on December 27, 2011 (76 FR 80747), to regulate direct PM<sub>2.5</sub> emissions, in addition to nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) as precursors to PM<sub>2.5</sub>. In addition to the State's NSR permitting regulations, the State's approved SIP contains rules that establish various controls on emissions of particulate matter, NO<sub>x</sub>, and SO<sub>2</sub>. These regulations address operational and work practice standards, fuel burning equipment and fuel sulfur content, grain loading, specific industry sectors, motor vehicle pollution, industrial emission management, residential wood heating, field burning, and banking of emission reduction credits.

As described above, the comment focused on the Coyote Island Terminal, LLC's proposed Morrow Pacific Project, asserting that if permitted, the source would, in the future, emit PM<sub>2.5</sub> in quantities that would violate the 2006 PM<sub>2.5</sub> NAAQS. Because the source in question is a new source which has not yet been permitted and is not currently operating, the comment does not provide a basis for finding that the SIP lacks emission limitations and other control measures necessary to support a disapproval of the State's infrastructure SIP submission.

The EPA finds that Oregon's SIP contains "emission limits and other control measures" that are appropriate to ensure attainment of the 2006 PM<sub>2.5</sub> NAAQS. Under the provisions of Oregon's Federally-approved SIP, owners and operators of new and modified major sources must satisfy the requirements of Oregon's Federally-approved major NSR program set forth at Oregon Administrative Rules (OAR) 340-224 "Major New Source Review." Oregon's major NSR program includes requirements for new and modified major sources located in attainment and unclassifiable areas (OAR 340-224-0070) and nonattainment areas (OAR 340-224-0050). Oregon's minor NSR program set forth at OAR 340-216 "Air Contaminant Discharge Permits" includes requirements for minor sources located in attainment, unclassifiable, and nonattainment areas and requires that increases in emissions from any new or modified source not cause or contribute to violations of ambient standards or applicable PSD increments. Oregon's Federally-approved major and minor NSR permitting programs regulate and control emissions from new and modified sources of regulated pollutants, including PM<sub>2.5</sub> and NO<sub>x</sub> and SO<sub>2</sub> as precursors.

The commenter's conclusion that "if the Oregon Department of Environmental Quality issues an air pollution permit to the Coyote Island terminal, it will demonstrate that the Oregon SIP currently lacks emission limits and other measures to ensure attainment and maintenance of the 2006 PM<sub>2.5</sub> NAAQS" fails to account for the State's Federally-approved NSR permitting programs and the requirements that owners and operators must satisfy prior to obtaining a permit. A finding related to the legal adequacy of this SIP cannot be based solely on the outcome of this particular potential permitting action, as the commenter proffers.

The EPA believes the current, Federally-approved Oregon SIP includes enforceable emission limitations and other control measures, means, or techniques to attain and maintain the

2006 PM<sub>2.5</sub> NAAQS, and therefore, is taking final action to find that the Oregon SIP meets the requirements of CAA section 110(a)(2)(A) for the 2006 PM<sub>2.5</sub> NAAQS.

### **III. Action**

The EPA has determined that the September 25, 2008, December 23, 2010, August 17, 2011, and December 19, 2011, SIP submittals from the State of Oregon are consistent with the requirements of section 110 of the CAA. Therefore, the EPA is approving the SIP submittals from the State of Oregon to demonstrate that the SIP meets the infrastructure requirements of the CAA for the NAAQS promulgated for PM<sub>2.5</sub> on July 18, 1997, and October 17, 2006, and for ozone on March 12, 2008. The EPA is finding that the Federally-approved provisions currently in the Oregon SIP meet the following CAA section 110(a)(2) infrastructure elements for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and the 2008 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The EPA is also finding that the Federally-approved provisions currently in the Oregon SIP meet the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to prevention of significant deterioration for the 2008 ozone NAAQS, and CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS. This action is being taken under section 110 of the CAA.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP 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 SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves the state's law as meeting Federal requirements and does not impose additional

requirements beyond those imposed by the state's 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 the 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 rule 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 Oregon, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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).

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 [FEDERAL REGISTER OFFICE: INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT 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, Ozone, Particulate Matter, and Reporting and recordkeeping requirements.

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

Dated: July 19, 2013.

Michelle Pirzadeh,  
Acting Regional Administrator,  
Region 10.

40 CFR part 52 is amended 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 MM - Oregon**

2. Section 52.1991 is amended by redesignating the undesignated text as paragraph (a), and by adding paragraph (b) to read as follows:

**§ 52.1991 Section 110(a)(2) infrastructure requirements.**

\* \* \* \* \*

(b) On September 25, 2008, December 23, 2010, August 17, 2011, and December 19, 2011, the Oregon Department of Environmental Quality submitted SIP revisions to address the requirements of CAA sections 110(a)(1) and (2) for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS. The EPA approves the submittals as meeting the following CAA section 110(a)(2) infrastructure elements for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and the 2008 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The EPA also approves the submittals as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to prevention of significant deterioration for the 2008 ozone NAAQS, and CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS.

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