



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2014-0842 ; A-1-FRL- 9927-32-Region 1]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Prevention of Significant Deterioration and Nonattainment New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to fully approve revisions to the State of Connecticut's State Implementation Plan (SIP) relating to regulation of fine particulate matter (PM_{2.5}) emissions within the context of EPA's Prevention of Significant Deterioration (PSD) regulations. EPA is also approving clarifications to the applicability section of Connecticut's Nonattainment New Source Review (NNSR) regulations. These revisions will be part of Connecticut's major stationary source preconstruction permitting programs, and are intended to align Connecticut's regulations with the federal PSD and NNSR regulations. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: This direct final rule will be effective **[Insert date 60 days from date of publication in the Federal Register]**, unless EPA receives adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2014-0842 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: dahl.donald@epa.gov
3. Fax: (617) 918-0657.
4. Mail: "Docket Identification Number EPA-R01-OAR-2014-0842", Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912.
5. Hand Delivery or Courier. Deliver your comments to: Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square - Suite 100 (Mail code OEP05-2), Boston, MA 02109 - 3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R01-OAR-2014-0842. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected.

The www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information may not be publicly available, e.g., 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 either electronically in www.regulations.gov or in hard copy at U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, 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.

In addition, a copy of the state submittal is also available for public inspection during normal business hours, by appointment at the State Air Agency; the Bureau of Air Management,

Department of Energy and Environmental Protection, State Office Building, 79 Elm Street,
Hartford, CT 06106-1630.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square - Suite 100, (mail code OEP05-2), Boston, MA 02109 - 3912. Mr. Dahl's telephone number is (617) 918-1657; e-mail address: dahl.donald@epa.gov.

SUPPLEMENTARY INFORMATION:

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

Organization of this document. The following outline is provided to aid in locating information in this preamble.

Table of Contents

- I. What is the background for EPA's action?
- II. What is EPA's analysis of Connecticut's proposed SIP revisions?
 - A. Connecticut's September 27, 2012 SIP submission
 - B. Connecticut's October 9, 2012 SIP submission
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. What is the background for EPA's action?

On September 27, 2012 and October 9, 2012, the State of Connecticut's Department of Energy and Environmental Protection (CT DEEP) submitted to EPA proposed formal revisions to Connecticut's State Implementation Plan (SIP). The submitted SIP revisions consist of: 1) amendments to Connecticut's PSD regulations and tables to address PM_{2.5} emissions; 2) a notice requirement to be provided to states affected by emissions from major new or modified construction; 3) one modified definition relating to the State's PSD program; 4) language amending an existing section of the State's NNSR SIP regulations for purposes of clarification; and 5) the addition of PM_{2.5} in an emissions offset provision of the State's NNSR regulations. Each of these revisions relates to requirements contained in EPA's regulations codified at either 40 CFR 51.165 (NNSR) or 51.166 (PSD).

II. What is EPA's analysis of Connecticut's proposed SIP revisions?

Connecticut is currently a SIP-approved state for all CAA major stationary source preconstruction permitting programs, PSD and NNSR. EPA's analysis of Connecticut's September 27, 2012 and October 9, 2012 submissions in relation to those federal programs appears below.

A. Connecticut's September 27, 2012 SIP submission

Connecticut's submission included sections 22a-174-2a(b)(5)(E) and (b)(6) of its air program regulations. Those provisions clarify when and which entities will receive from the CT DEEP a copy of the notice of the State's "tentative determination" (or draft major stationary source preconstruction permit). More specifically, Connecticut's SIP-approved regulations had not previously contained a provision requiring notice (prior to issuance of a PSD permit) to states

whose air quality may be affected by emissions from a major new or modified source. EPA identified this missing requirement when determining whether Connecticut's SIP met the affected state notification requirement in CAA section 110(a)(2)(D)(ii) and 40 CFR 51.166(q)(2)(iv). On October 16, 2012, EPA conditionally approved Connecticut's infrastructure SIP for the 1997 and 2006 PM_{2.5} standards. See 77 FR 63228. The portion of the October 16, 2012 conditional approval addressed by the State's September 27, 2012 SIP revision involved the requirement that Connecticut notify other affected states prior to issuing a PSD permit.

EPA has analyzed the submitted provisions and has determined that they are consistent with EPA's regulations, including the requirement at 40 CFR 51.166(q)(2)(iv) applicable to affected state notice. Therefore, EPA is fully approving the revisions into Connecticut's SIP.

B. Connecticut's October 9, 2012 SIP submission

Connecticut's submission addresses PM_{2.5} emissions requirements for PSD permitting by adding PM_{2.5} to several sections of the State's SIP regulations. These sections are Section 22a-174-1 (definition of "Major source baseline date") and Tables 3a(i)-1 (Ambient Impact¹), 3a(k)-1 (Significant Emission Rate Thresholds) and 3a(k)-2 (PSD Increment) in Section 22a-174-3a.

Connecticut's SIP-approved regulations had not previously contained provisions that addressed PM_{2.5} requirements for PSD permitting. EPA identified these missing requirements when determining whether Connecticut's infrastructure SIP met the requirements of a fully approved PSD program set forth in CAA sections 110(a)(2)(C), (D)(i)(II) and (J). On October 16, 2012, EPA conditionally approved Connecticut's infrastructure SIP for the 1997 and 2006

¹ The values contained in Connecticut's Ambient Impact table correspond to EPA's Significant Impact Levels (SILs).

PM_{2.5} standards. See 77 FR 63228. The portion of EPA's October 16, 2012 conditional approval addressed by the State's October 9, 2012 SIP revision submission involved establishing a Significant Emission Rate Threshold for PM_{2.5} emissions and precursors to PM_{2.5}, PM_{2.5} increment, and adding PM_{2.5} to the definition of "Major source baseline date."

The October 9, 2012 submission also included revisions to Connecticut's NNSR regulations. These revisions are to Section 22a-174-3a(l)(1) (applicability), discussed in more detail below, and Section 22a-174-3a(l)(4)(B)(iv), adding PM_{2.5} to a list of pollutants relevant to emissions offsets. We note, however, that Connecticut currently does not have any PM_{2.5} nonattainment areas.

In EPA's "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers," Final Rule, 73 FR 28321 (May 16, 2008), EPA established a new significance level for PM_{2.5} emissions. In EPA's "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})--Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)," Final Rule, 75 FR 64864 (October 20, 2010), EPA established increments, SILs, and SMCs for PM_{2.5} emissions. Both of these EPA rules required Connecticut to amend their state regulations for permitting major new and modified major stationary sources in relation to the PM_{2.5} NAAQS.

On January 22, 2013, the United States Court of Appeals for the District of Columbia Circuit granted a request from EPA to vacate and remand to EPA the portions of the PM_{2.5} PSD Increment-SILs-SMC Rule (40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2)) addressing the SILs for PM_{2.5} so that EPA could voluntarily correct an error in these provisions. See *Sierra Club v. EPA*, 705 F.3d 458, 463-66 (D.C. Cir. 2013). The court declined to vacate the SILs provision at 40 CFR 51.165(b)(2) that did not contain that same error. *Id.* The Court also vacated the part of

the PM_{2.5} PSD Increment-SILs-SMC Rule establishing the PM_{2.5} SMC for the PSD permitting program, finding that EPA was precluded from using the PM_{2.5} SMC to exempt permit applicants from the statutory requirement to compile and submit preconstruction monitoring data as part of a complete PSD application. *Id.* at 469. On December 9, 2013, EPA issued a final rulemaking to remove the vacated PM_{2.5} SILs provisions and revising the existing PM_{2.5} SMC listed in 40 CFR 51.166(i)(5)(i)(c) to zero micrograms per cubic meter (0 µg/m³). See 78 FR 73698.

Connecticut has never adopted an SMC for PM_{2.5} emissions pursuant to 40 CFR 51.166(i)(5), which was vacated by the United States Court of Appeals for the District of Columbia Circuit, because the provision is an optional element of a state's program and Connecticut chose not to include that element in its program. Connecticut's regulations also do not contain provisions that address the SIL provisions at 40 CFR 51.166(k)(2) vacated by the Court.

EPA has analyzed the above-described amended sections of Connecticut's regulations and has determined those sections are consistent with the requirements codified at 40 CFR 51.166, and therefore should be approved into Connecticut's SIP.

Connecticut's October 9, 2012 submission also included amendments to certain sections of the State's NNSR regulations. One change affected section 22a-174-3a(l)(1) of Connecticut's regulations and was adopted to clarify that the applicability of the State's NNSR requirements is triggered in designated nonattainment areas by emissions of the pollutant for which the area is designated nonattainment.

As noted earlier, Connecticut also added PM_{2.5} emissions to a list of pollutants in section 22a-174-3a(l)(4)(B)(iv), which addresses emission reduction credits. As also noted earlier, however, Connecticut currently does not have any PM_{2.5} nonattainment areas.

EPA has analyzed the above-described amended sections of Connecticut's regulations and has determined those sections are consistent with the requirements codified at 40 CFR 51.165, and therefore should be approved into Connecticut's SIP.

The State's October 9, 2012 submission also included an amendment to Table 3a(i)-1 of section 22a-174-3a, adding values for PM_{2.5} Ambient Impact (these values are equivalent conceptually to EPA's SILs). The State's October 9, 2012 submission also included section 22a-174-3a(l)(l)(C), which requires sources to undergo NNSR and permitting even though they are located in attainment areas or areas that are unclassifiable, but only if the allowable emissions from such sources would cause or exacerbate a violation of a NAAQS in an adjacent nonattainment area. EPA is approving these two revisions to Connecticut's SIP. In doing so, however, we note that section 22a-174-3a(l)(l)(C) contains a reference to Table 3a(i)-1 of section 22a-174-3a (the State's Ambient Impact values) and specifies that if the modeled ambient impacts from a source's allowable emissions would be below those impact values the NNSR permitting requirements of section 22a-174-3a(l)(l)(C) would then not apply. EPA interprets this provision to only apply in the state's NNSR permitting program to determine whether a source locating in an attainment or unclassifiable area will cause or exacerbate a violation of the NAAQS in an adjacent nonattainment area and thus be subject to NNSR review under the particular requirements of the Connecticut SIP. As this provision only appears in the state's NNSR permitting rules, EPA does not interpret this provision to apply in Connecticut's PSD permitting program to determine whether a proposed new or modified source would cause or

contribute to a violation of the NAAQS anywhere. Thus, this narrowly drafted NNSR applicability provision and the manner in which Connecticut's regulation applies the ambient impact values from Table 3a(i)-1 in this provision are not in conflict with the D.C. Circuit decision in *Sierra Club v. EPA* that vacated EPA's SIL provision at 40 CFR 51.166(k)(2). EPA views Section 22a-174-3a(l)(1)(C) as a NNSR applicability provision that has no effect on Connecticut's PSD permitting program, which still requires that a proposed new or modified source locating in an attainment or unclassifiable area to make an appropriate demonstration that it does not cause or contribute to a violation of any NAAQS or increment. See Section 22a-174-3a(k) of CT DEEP's regulations.

III. FINAL ACTION

Pursuant to section 110 of the CAA, EPA is fully approving Connecticut's September 27, 2012 and October 9, 2012 SIP revisions. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revisions should relevant adverse comments be filed. This rule will be effective **[Insert date 60 days from date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**.

If the EPA receives such comments, then EPA will publish a notice withdrawing today's final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA

will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[Insert date 60 days from date of publication in the Federal Register]** and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Incorporation by Reference

In this rule, 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 State of Connecticut Department of Energy and Environmental Protection Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES 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 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, 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 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).

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).

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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping, Sulfur oxides, Volatile organic compounds.

Dated: April 20, 2015.

H. Curtis Spalding,
Regional Administrator,
EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart H - Connecticut

2. Section 52.370 is amended by adding paragraphs (c)(107) and (108) to read as follows:

§ 52.370 Identification of plan

* * * *

(c) * * *

(107) Revisions to the State Implementation Plan submitted by the Connecticut Department of Energy and Environmental Protection on September 27, 2012.

(i) Incorporation by reference.

(A) Regulations of Connecticut State Agencies Section 22a-174-2a(b)(5) introductory text and Section 22a-174-2a(b)(5)(E), as published in the Connecticut Law Journal on October 23, 2012, effective September 10, 2012.

(B) Regulations of Connecticut State Agencies Section 22a-174-2a(b)(6), as published in the Connecticut Law Journal on October 23, 2012, effective September 10, 2012.

(108) Revisions to the State Implementation Plan submitted by the Connecticut Department of Energy and Environmental Protection on October 9, 2012.

(i) Incorporation by reference.

(A) Regulations of Connecticut State Agencies Section 22a-174-1(62), as published in the Connecticut Law Journal on October 16, 2012, effective September 10, 2012.

(B) Regulations of Connecticut State Agencies Section 22a-174-3a(i), Table 3a(i)-1, published in the Connecticut Law Journal on October 16, 2012, effective September 10, 2012.

(C) Regulations of Connecticut State Agencies revisions to Section 22a-174-3a(k), Table 3a(k)-1, published in the Connecticut Law Journal on October 16, 2012, effective September 10, 2012.

(D) Regulations of Connecticut State Agencies revisions to Section 22a-174-3a(k), Table 3a(k)-2, published in the Connecticut Law Journal on October 16, 2012, effective September 10, 2012

(E) Regulations of Connecticut State Agencies revisions to Section 22a-174-3a (l)(1), published in the Connecticut Law Journal on October 16, 2012, effective September 10, 2012.

(F) Regulations of Connecticut State Agencies revisions to Section 22a-174-3a(l)(4)(B) introductory text and Section 22a-174-3a(l)(4)(B)(iv), published in the Connecticut Law Journal on October 16, 2012, effective September 10, 2012.

3. In § 52.385, Table 52.385 is amended by adding new entries to existing state citations for 22a-174-1, 22a-174-2a, and 22a-174-3a to read as follows:

§ 52.385 - EPA-approved Connecticut regulations.

* * * * *

Table 52.385 - EPA-Approved Regulations

Connecticut State citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
*	*	*	*	*	*	*
22a-174-1	Definitions	9/10/2012	[Insert <u>Federal Register</u> date of publication date]	[Insert <u>Federal Register</u> citation]	(c)(108)	Modified definition of “major source baseline date” for purposes of adding PM _{2.5}
*	*	*	*	*	*	*
22a-174-2a	Procedural Requirements for New Source Review and Title V Permitting	9/10/2012	[Insert <u>Federal Register</u> date of publication date]	[Insert <u>Federal Register</u> citation]	(c)(107)	Only sections 22a-174-2a(b)(5)(E) and (b)(6) are being approved.
*	*	*	*	*	*	*
22a-174-3a	Permit to Construct and Operate Stationary Sources	9/10/2012	[Insert <u>Federal Register</u> date of publication date]	[Insert <u>Federal Register</u> citation]	(c)(108)	Added Ambient Impact values for PM _{2.5} in Table 3a(i)-1, Significant Emission Rate Thresholds for PM _{2.5} emissions and its precursors in Table 3a(k)-1, PM _{2.5} increment added to Table 3a(k)-2, and PM _{2.5} added to section 22a-174-3a(l)(4)(B)(iv). Revised section 22a-174-3a(l)(1).
*	*	*	*	*	*	*

[FR Doc. 2015-17664 Filed: 7/23/2015 08:45 am; Publication Date: 7/24/2015]