



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2016-0660; FRL-9958-80-Region 9]

Approval of California Air Plan; Owens Valley Serious Area Plan for the 1987 24-Hour PM₁₀ Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a state implementation plan (SIP) revision submitted by the State of California to meet Clean Air Act (CAA or “Act”) requirements applicable to the Owens Valley PM₁₀ nonattainment area (NA). The Owens Valley PM₁₀ NA is classified as a “Serious” nonattainment area for the national ambient air quality standards (NAAQS) for particulate matter of ten microns or less (PM₁₀). The submitted SIP revision is the “Great Basin Unified Air Pollution Control District 2016 Owens Valley Planning Area PM₁₀ State Implementation Plan” (“2016 PM₁₀ Plan” or “Plan”). The State’s obligation to submit the 2016 PM₁₀ Plan was triggered by the EPA’s 2007 finding that the Owens Valley PM₁₀ NA had failed to meet its December 31, 2006, deadline to attain the PM₁₀ NAAQS. The CAA requires a Serious PM₁₀ nonattainment area that fails to meet its attainment deadline to submit a plan providing for attainment of the PM₁₀ NAAQS and for an annual reduction in PM₁₀ emissions of not less than five percent until attainment of the PM₁₀ NAAQS. The EPA is approving the 2016 PM₁₀ Plan because it meets all relevant statutory and regulatory requirements.

DATES: This rule is effective on [insert date 30 days after the date of publication in the Federal Register].

ADDRESSES: The EPA has established a docket for this action, identified by Docket ID Number EPA-R09-OAR-2016-0660. The index to the docket is available electronically at <http://www.regulations.gov> or in hard copy at the EPA Region IX office, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, confidential business information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed below.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, EPA Region IX, 415-972-3964, vagenas.ginger@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms “we,” “us,” and “our” mean EPA.

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I. Summary of Proposed Action

On December 12, 2016, the EPA proposed to approve the Owens Valley 2016 PM₁₀ Plan, which the State of California submitted on June 9, 2016, as meeting all relevant statutory and regulatory requirements under the CAA.¹ As discussed in our proposed rule, the Owens Valley

¹ 81 FR 89407.

PM₁₀ NA is a Serious PM₁₀ nonattainment area that is located in the southern portion of the Owens Valley in Inyo County, California.²

California's obligation to submit the 2016 PM₁₀ Plan was triggered by the EPA's June 6, 2007 finding that the Owens Valley PM₁₀ NA had failed to meet its December 31, 2006 deadline to attain the PM₁₀ NAAQS.³ The CAA requires a Serious PM₁₀ NA that fails to meet its attainment deadline to submit a plan providing for attainment of the PM₁₀ NAAQS and for an annual emission reduction in PM₁₀ or PM₁₀ precursors of not less than five percent per year until attainment. Our December 12, 2016 proposed rule provides the background and rationale for this action.

II. Public Comments and the EPA's Response to Comments

The EPA provided a 30-day public comment period on our proposed action. The comment period ended on January 11, 2017. We received two public comment letters: one from the Timbisha Shoshone Tribe and one from the Big Pine Paiute Tribe of the Owens Valley. The submitted comment letters, which we have summarized and responded to below, are in our docket.

Comment 1: The Timbisha Shoshone Tribe expressed its support for our approval of the 2016 PM₁₀ Plan.

Response 1: The EPA appreciates the Timbisha Shoshone Tribe's support of our approval.

Comment 2: The Big Pine Paiute Tribe's ("Tribe") comment letter acknowledged the effectiveness of the dust control measures that have been required under the 2016 PM₁₀ Plan and

² The boundary of the Owens Valley PM₁₀ nonattainment area is defined in 40 CFR 81.305 as Hydrologic Unit #18090103.

³ 72 FR 31183.

the progress that has been made in improving air quality in the Owens Valley over the past 20 years. The Tribe's comment letter did not raise any objections to our determination that the Plan meets the CAA requirements or to our approval of the 2016 PM₁₀ Plan. The Tribe articulated a number of concerns regarding the broader context of the historical events resulting in the desiccation of the Owens Lake bed, which are discussed in our specific responses below.

Response 2: The EPA appreciates the Tribe's acknowledgement of the effectiveness of the dust control measures and agrees that the air quality in the Owens Valley has improved significantly over the past 20 years.

Comment 3: The Tribe considers the EPA's action in this rulemaking to be too narrow to address all of the environmental and cultural issues caused by Los Angeles Department of Water and Power's (LADWP) historic and on-going diversion of water from the Owens Valley. The Tribe states that the diversion of water from the Owens Lake bed should be defined as a "project" and therefore subject to the California Environmental Quality Act (CEQA).

Response 3: The EPA understands the Tribe's concern with LADWP's diversion of water from the Owens Valley. The EPA's role under the CAA, however, is to review attainment plans to determine their compliance with the applicable provisions of the Act. If a plan meets those provisions, the CAA requires that we approve it so that it becomes enforceable under the Act. Such approval ensures the control measures adopted by a state will be implemented so that air quality will be improved and the NAAQS will be attained. The EPA is finalizing our proposed approval of the 2016 PM₁₀ Plan because it meets the requirements of the CAA.

We also recognize the Tribe's comment concerning the scope of the definition of a "project" under CEQA. CEQA is a state law, and the EPA does not have a role in implementing it.

Comment 4: The Tribe commented that mitigation measures that have been implemented on the Owens Lake bed may have resulted in the disruption or destruction of cultural sites and artifacts. The Tribe states that “sites previously regarded as not significant (or “eligible” for the national or California register of historic resources) were undoubtedly destroyed before they were seen in their true context.” The Tribe notes that “relatively recently, the Owens Lake Cultural Resources Task Force (CRTF) was formed to address cultural resources affected by the dust control effort and make recommendations on protection.” While the Tribe views the formation of the CRTF as “too little too late,” it acknowledges that “at least it is now an attempt to protect what remains and to pursue adequate compensatory mitigation.” The Tribe recommends continuation of the CRTF and expansion of its scope beyond the Owens Lake bed. Finally, the Tribe requests the EPA’s participation on the CRTF.

Response 4: The EPA agrees that the CRTF has a significant role to play in the preservation of cultural resources. We encourage all parties to continue these efforts. In consultation with the CRTF, the EPA will consider the Tribe’s invitation to participate.

Comment 5: The Tribe states that the laws that “are supposed to protect the environment and allow for tribal consultation are not always effective in practice and thus often fail to truly protect the environment and foster meaningful government to government consultation.” The Tribe views the law protecting air quality as “strong” but states that the law is “weaker when it comes to tribal consultation and protecting cultural resources.” The Tribe notes that it appreciated the EPA’s consultation teleconference on December 21, 2016, but that the consultation was “too little too late.” Finally, the Tribe notes that “resources important to tribes (and all people) should be protected under the public trust doctrine the same as air quality.”

Response 5: The EPA acknowledges the Tribe's concerns and encourages all stakeholders to work together to address the environmental and cultural issues highlighted by the Tribe. We take our role in implementing the CAA and our role in fostering timely and meaningful consultation seriously. We consider our approval of the 2016 PM₁₀ Plan as a critical step in protecting human health and the environment. We also believe that, given the scope of this action, consultation was timely and appropriate. We invited the Tribe to consult with us on December 1, 2016, and consultation was held on December 21, 2016. In this particular instance, we consulted with the Tribe regarding our specific proposed action to approve the Owens Valley PM₁₀ Plan as meeting all requirements of the CAA. We understand the Tribe's view that because the water diversions and subsequent impacts began "decades before the state or the nation had environmentally protective laws" in place, consultation is "too little, too late." As we expressed during our consultation teleconference, we appreciate the concerns the Tribe explained in consultation and in its comment letter. We also note that the Tribe generally supports our approval of the 2016 PM₁₀ Plan and its effect of improved air quality and attainment of the PM₁₀ NAAQS.

III. EPA's Final Action

The EPA is approving the Serious area 2016 PM₁₀ Plan submitted by the State of California for the Owens Valley PM₁₀ nonattainment area. Specifically, the EPA is approving the 2016 PM₁₀ Plan with respect to the following CAA requirements: public notice and involvement under section 110(a)(1); emissions inventories under section 172(c)(3); the control measures in Rule 433 under section 110(k)(3) as meeting the requirements of sections 110(a) and 189(b)(1)(B); reasonable further progress and quantitative milestones under section 189(c); the contingency measure in Rule 433 under section 172(c)(9); and the demonstration of attainment

under section 189(b)(1)(A). The EPA is also approving the State's request for an extension of the attainment date to June 6, 2017, pursuant to CAA sections 188 and 179.

IV. 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, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this final 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 final 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 Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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 the 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). We notified local tribes of our proposed approval and held two tribal consultations during the comment period.

The Congressional Review Act, 5 U.S.C. section 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. The 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 **[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, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: January 13, 2017.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 F—California

2. Section 52.220 is amended by revising paragraph (c)(483) introductory text and by adding paragraph (c)(483)(ii) to read as follows:

§52.220 Identification of plan—in part.

* * * * *

(c) * * *

(483) The following plan was submitted on June 9, 2016, by the Governor's designee.

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(ii) Additional materials.

(A) Great Basin Unified Air Pollution Control District (GBUAPCD).

(1) “2016 Owens Valley Planning Area PM₁₀ State Implementation Plan,” adopted April 13, 2016, excluding all of the following: Section 10.1 (“Proposed Rule 433”); Appendix I-1 (“2006 Settlement Agreement”); Appendix II-1 (“2014 Stipulated Judgement”); Appendices D (“2008 GBUAPCD Board Order No. 080128-01”), E (“2013 GBUAPCD Board Order No. 130916-01”), and F (“GBUAPCD Fugitive Dust Rules (400, 401, 402)”) of Appendix V-1 (“Owens Valley Planning Area 2016 State Implementation Plan BACM Assessment”); Appendix VI-2 (“Owens Lake Dust Mitigation Program Phase 9/10 Project – Final Environmental Impact Report (May 2015)”); and Appendix X-1 (“Proposed Rule 433”).

[FR Doc. 2017-04804 Filed: 3/10/2017 8:45 am; Publication Date: 3/13/2017]