



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2017-0589; FRL-9975-16-Region 1]

Air Plan Approval; Vermont; Nonattainment New Source Review and Prevention of Significant Deterioration Permit Program Revisions; Infrastructure Requirements for National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving several different revisions to the State Implementation Plan (SIP) submitted to the EPA by the Vermont Department of Environmental Conservation (VT DEC). On May 23, 2017, Vermont submitted revisions to the EPA satisfying the VT DEC's earlier commitment to adopt and submit revisions that meet certain requirements of the Federal Prevention of Significant Deterioration (PSD) air permit program. Vermont's submission also included revisions relating to the federal nonattainment new source review (NNSR) permit program. This action approves those revisions and also fully approves certain elements of Vermont's infrastructure SIPs (ISIPs), which were conditionally approved by the EPA on June 27, 2017. Additionally, the EPA is approving several other minor regulatory changes to the SIP submitted by VT DEC on May 23, 2017. This action is being taken in accordance with the Clean Air Act.

DATES: This 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 Identification No. EPA-R01-OAR-2017-0589. All documents in the docket are listed on the

<https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., 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 at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. The 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.

FOR FURTHER INFORMATION CONTACT: Eric Wortman, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square – Suite 100, (Mail Code OEP05-2), Boston, MA 02109-3912, phone number (617) 918-1624, fax number (617) 918-0624, email wortman.eric@epa.gov.

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

Table of Contents

- I. Background and Purpose
- II. Final Action
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

I. Background and Purpose

On December 18, 2017, the EPA published a Notice of Proposed Rulemaking (NPRM) for the State of Vermont. *See* 82 FR 59997. The NPRM proposed approval of several different

revisions to the SIP submitted by the VT DEC. The formal SIP revision was submitted by Vermont on May 23, 2017.

As discussed in the NPRM, the VT DEC revised the Vermont Air Pollution Control Regulations (APCR) on December 15, 2016 to address the two provisions identified in the EPA's June 27, 2017 conditional approval, which are required under the Federal PSD permit program regulations and were not included in the State's ISIPs submittal. *See* 82 FR 29005, June 27, 2017. Specifically, the definition of "significant" in APCR § 5-101(80) was revised to define the significant emissions rate increase for ozone as 40 tons or greater of either VOCs or NO_x as ozone precursors. In addition, the VT DEC revised APCR sections 5-502(4)(c) and 5-502(5)(a) and (b) to require that PSD increment reviews and the determination of remaining PSD increment be conducted or determined in accordance with the applicable regulations at 40 CFR § 51.166.

The EPA's NPRM also proposed approval into the Vermont SIP of the requirements in Vermont's NNSR and PSD permit program at APCR sections 5-501(9) and 5-502(9). The provision at section 5-501(9) clarifies that no action under section 5-501 relieves any person from complying with any other requirements of local, State, or Federal law. APCR section 5-502(9) requires an alternative site analysis to be conducted when: 1) a source or modification that is major is proposed to be constructed in a non-attainment area; or 2) a source or modification is major for ozone and/or precursors to ozone.

Additionally, the NPRM proposed to incorporate into the SIP revisions to the regulations relating to particulate matter at APCR sections 5-231(4) and (5). APCR section 5-231(4) was revised to prohibit a process operation to operate without taking reasonable precautions to prevent particulate matter from becoming airborne. APCR section 5-231(5) was revised to

update and replace the term “Asphalt Concrete Plant” with the more commonly used term “Hot Mix Asphalt Plant.”

The EPA also proposed to approve minor revisions to the work practice standards for wood furniture manufacturers and the regulations for sampling and testing of sources. The wood furniture manufacturing regulation at APCR section 5-253.16(d)(8) was amended to limit the use of conventional air spray guns to apply finishing materials only when all emissions from the finishing application station are routed to a functioning control device. The NPRM also proposed to approve changes to the stack testing requirements at APCR section 5-404. This revision adds 40 CFR part 51, Appendix M, as a testing option and requires that all other methods be approved by the Air Pollution Control Officer and the EPA, as opposed to just the Air Pollution Control Officer. The rationale for the EPA's proposed action is explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

II. Final Action

The EPA is approving the changes in the May 23, 2017 submittal as a revision to the Vermont SIP. The EPA has determined the revisions in the May 23, 2017 are consistent with the CAA and appropriate for inclusion into the Vermont SIP. We are also converting the June 27, 2017 conditional approval of Vermont's ISIPs for Federal PSD requirements to a full approval.

III. 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 Vermont statutes 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 through <https://www.regulations.gov>.

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 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 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, 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).

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. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 8, 2018.

Alexandra Dapolito Dunn,
Regional Administrator,
EPA Region 1.

Part 52 of 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 UU—Vermont

2. In § 52.2370:

a. The table in paragraph (c) is amended by revising the entries for “Section 5-101”, “Section 5-231”, “Section 5-253.16”, “Section 5-404”, “Section 5-501”, and “Section 5-502”; and

b. The table in paragraph (e) is amended by revising the entries “Infrastructure SIP for 1997 PM_{2.5} NAAQS”, “Infrastructure SIP for 1997 ozone NAAQS”, “Infrastructure SIP for 2006 PM_{2.5} NAAQS”, “Infrastructure SIP for the 2008 Lead NAAQS”, “Infrastructure SIP for 2008 ozone NAAQS”, “Infrastructure SIP for the 2010 NO₂ NAAQS”, and “Infrastructure SIP for the 2010 SO₂ NAAQS”.

The revisions read as follows:

§ 52.2370 Identification of plan.

- * * * * *
- (c) EPA approved regulations.

EPA-Approved Vermont Regulations

| State citation | Title/subject | State effective date | EPA approval date | Explanations |
|----------------|---------------|----------------------|--|---|
| ** | * | * | * | ** |
| Section 5-101 | Definitions | December 15, 2016 | <u>[Insert date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u> | Approving revisions made to definition for “significant” to include emissions of ozone precursors |
| ** | * | * | * | ** |

| | | | | |
|------------------|---|-------------------|--|---|
| Section 5-231 | Prohibition of particular matter | December 15, 2016 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Approving revisions to prohibit a process and other specified operations without taking reasonable precautions to prevent particulate matter from becoming airborne, and updating terminology for consistency with industry practice. |
| ** | * | * | * | ** |
| Section 5-253.16 | Wood Furniture Manufacturing | December 15, 2016 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Approving revisions for consistency with underlying federal regulations. |
| ** | * | * | * | ** |
| Section 5-404 | Methods for sampling and testing of sources | December 15, 2016 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Approving revisions to provide required methods that must be followed when conducting a stack test. |
| ** | * | * | * | ** |
| Section 5-501 | Review of construction or modification of air contaminant sources | December 15, 2016 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Approving revisions to Section 5-501(9) to clarify applicability of local, state, or federal law. |
| Section 5-502 | Major stationary sources and major modifications | December 15, 2016 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Approving revisions to Section 5-502(4)(c) and 5-502(5)(a) and (b) to provide process for PSD increment review demonstration and to determine increment; Approving revisions to Section 5-502(9) to provide requirement for alternative site analysis if: a source is major for ozone and/or major for precursors to ozone; or 2) a source or modification that is major is proposed to be constructed in a nonattainment area. |
| * | * | * | * | ** |

* * * * *

(e) Nonregulatory.

Vermont Non-Regulatory

| Name of non-regulatory SIP provision | Applicable geographic or nonattainment area | State submittal date/effective date | EPA approval date | Explanation |
|---|---|-------------------------------------|--|--|
| ** | * | * | * | ** |
| Infrastructure SIP for 1997 PM _{2.5} NAAQS | Statewide | December 15, 2016 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Certain aspects relating to PSD which were conditionally approved on June 27, 2017 are now fully approved. |
| Infrastructure SIP for 1997 ozone NAAQS | Statewide | December 15, 2016 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Certain aspects relating to PSD which were conditionally approved on June 27, 2017 are now fully approved. |
| Infrastructure SIP for 2006 PM _{2.5} NAAQS | Statewide | December 15, 2016 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Certain aspects relating to PSD which were conditionally approved on June 27, 2017 are now fully approved. |
| Infrastructure SIP for the 2008 Lead NAAQS | Statewide | December 15, 2016 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Certain aspects relating to PSD which were conditionally approved on June 27, 2017 are now fully approved. |
| Infrastructure SIP for 2008 ozone NAAQS | Statewide | December 15, 2016 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Certain aspects relating to PSD which were conditionally approved on June 27, 2017 are now fully approved. |
| Infrastructure SIP for the 2010 NO ₂ NAAQS | Statewide | December 15, 2016 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Certain aspects relating to PSD which were conditionally approved on June 27, 2017 are now fully approved. |

| | | | | |
|---|-----------|-------------------|--|--|
| Infrastructure SIP for the 2010 SO ₂ NAAQS | Statewide | December 15, 2016 | <p>[Insert date of publication in the Federal Register]</p> <p>[Insert <u>Federal Register</u> citation]</p> | Certain aspects relating to PSD which were conditionally approved on June 27, 2017 are now fully approved. |
| ** | * | * | * | ** |

[FR Doc. 2018-05317 Filed: 3/16/2018 8:45 am; Publication Date: 3/19/2018]