6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2017-0542; FRL-9979-65-Region 4]

Air Plan Approval; Tennessee: Knox County NSR Reform

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve several Tennessee State Implementation Plan (SIP) revisions submitted by the Tennessee Department of Environment & Conservation (TDEC), on behalf of Knox County's Air Quality Management Division, on March 7, 2017, and April 17, 2017. The SIP revisions modify the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) regulations in the Knox County portion of the Tennessee SIP to address changes to the federal new source review (NSR) regulations in recent years for the implementation of the national ambient air quality standards (NAAQS). Additionally, the SIP revisions include updates to Knox County's minor source permitting regulations. This action is being proposed pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. FDMS Docket ID Number EPA-R04-OAR-2017-0542 at http://www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from

Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit http://www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Andres Febres of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8966. Mr. Febres can also be reached via electronic mail at febres-martinez.andres@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. What action is EPA proposing?

EPA is proposing to approve changes to the Knox County portion of the Tennessee SIP regarding PSD and NNSR permitting, as well as updates to minor NSR, submitted by TDEC on behalf of Knox County's Air Quality Management Division. On March 7, 2017, Tennessee submitted two SIP revisions updating Knox County's Air Quality Management Regulations, Section 41.0 entitled "Regulations for the Review of New Sources," and Section 45.0 entitled "Prevention of Significant Deterioration." On April 17, 2017, Tennessee submitted two

additional SIP revisions, including additional changes to Section 41, and updates to Section 25.0 entitled "Permits." These SIP revisions are meant to address changes to the federal NSR regulations, as promulgated by EPA in various rules, and described below. EPA is proposing to approve the aforementioned SIP submittals in their entirety. Additional detail on the analysis of these SIP submittals and our reasoning for proposing to approve them is presented below.

II. Background

A. 2002 NSR Reform Rules

On December 31, 2002, EPA published final rule revisions to title 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the CAA's PSD and NNSR programs. *See* 67 FR 80186 (hereinafter referred to as the 2002 NSR Rule). The revisions included five changes to the major NSR program that would reduce burden, maximize operating flexibility, improve environmental quality, provide additional certainty, and promote administrative efficiency. These elements included baseline actual emissions, actual-to-projected-actual emissions methodology, plant-wide applicability limits (PALs), Clean Units, and pollution control projects (PCPs). The final rule also codified a longstanding policy regarding the calculation of baseline emissions for electric utility steam generating units and the definition of "regulated NSR pollutant" that clarifies which pollutants are regulated under the Act for purposes of major NSR.

Following publication of the 2002 NSR Rule, EPA received numerous petitions requesting reconsideration of several aspects of the final rule, along with portions of EPA's 1980 NSR Rules. *See* 45 FR 52676 (August 7, 1980). On July 30, 2003, EPA granted petitions for reconsideration of six issues presented by the petitioners and opened a new comment period for the public.[1] As a result of the reconsideration, on November 7, 2003 (68 FR 63021), EPA

[1] For full details on the six issues reconsidered by EPA, refer to the July 30, 2003 (68 FR 44624) document.

published the NSR Reform Reconsideration Rule. In the reconsideration rule, EPA made a final determination not to change any of the six issues opened for reconsideration, but did make two clarifications to the rule. These two clarifications included: 1) adding the definition of "replacement unit" to indicate that it is considered an existing unit in terms of major NSR applicability, and 2) specifying that the PAL baseline calculation procedures for newly constructed units do not apply to modified units. The 2002 NSR Rule and the NSR Reform Reconsideration Rule are hereinafter collectively referred to as the "2002 NSR Reform Rules."

The 2002 NSR Reform Rules were challenged in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), and the court issued a decision on the challenges on June 24, 2005. *See New York v. United States*, 413 F.3d 3 (D.C. Cir. 2005). In summary, the D.C. Circuit vacated portions of EPA's NSR rules pertaining to Clean Units and PCPs, remanded a portion of the rules regarding recordkeeping and the term "reasonable possibility" found in 40 CFR 52.21(r)(6), 40 CFR 51.166(r)(6), and 40 CFR 51.165(a)(6) to EPA, and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to exclude the portions that were vacated by the D.C. Circuit.

Meanwhile, EPA continued to move forward with its evaluation of the portion of its NSR Reform Rules that were remanded by the D.C. Circuit. On March 8, 2007 (72 FR 10445), EPA responded to the Court's remand regarding the recordkeeping provisions by proposing two alternative options to clarify what constitutes "reasonable possibility" and when the "reasonable possibility" recordkeeping requirements apply. The "reasonable possibility" standard identifies the circumstances under which a major stationary source must keep records for modifications that do not trigger major NSR. EPA later finalized these changes on December 21, 2007 (72 FR

72607).

Separately from the petitions received that led to the 2002 NSR Reconsideration Rule, EPA received another petition for reconsideration on July 11, 2003. Specifically, the petitioner requested EPA to reconsider the inclusion of "fugitive emissions" when assessing whether a proposed physical or operational change qualified as a "major modification." On November 13, 2007, EPA granted the petition for reconsideration, and on December 19, 2008, finalized the revision of the language to clarify which types of sources were required to include "fugitive emissions" in their calculations. *See* 73 FR 77882 (hereinafter referred to as the Fugitive Emissions Rule).

Finally, on February 17, 2009, EPA received one additional petition challenging the Fugitive Emissions Rule. Due to this petition, and after several stays,[2] EPA established an interim stay on March 30, 2011 (76 FR 17548), in which most of the Fugitive Emissions Rule language was stayed indefinitely. With the March 30, 2011, stay, EPA specified which portions of 40 CFR 51.165, 40 CFR 51.166, and 40 CFR 52.21 were stayed indefinitely, which were reinstated, and which were revised, in order to revert the federal rules to regulatory language that existed prior to the Fugitive Emissions Rule.

In summary, after several court decisions and public petitions, the federal major NSR program (found in 40 CFR 51.165, 51.166, and 52.21) no longer includes the provisions related to Clean Units or PCPs that were part of the 2002 NSR reform rules. Additionally, an indefinite stay has been placed on the language related to the Fugitive Emissions Rule. Knox County is adopting all of the surviving provisions from the 2002 NSR Reform Rules, and is not adopting

[2] EPA originally established a three-month stay that became effective September 30, 2009 (74 FR 50115), which was later extended for an additional three months, effective December 31, 2009 (74 FR 65692). In order to allow for more time for the reconsideration and for public comment on any potential revisions to the Fugitive Emissions Rule, EPA established a longer 18-month stay that became effective on March 31, 2010 (75 FR 16012).

all those provisions that were either vacated or stayed indefinitely. More details on Knox County's adoption of the 2002 NSR Reform Rules and our analysis of its submittals can be found in section III below.

B. $PM_{2.5}$ NAAQS

1. Implementation of NSR for the $PM_{2.5}$ NAAQS and Grandfathering Provisions

On May 16, 2008 (73 FR 28321), EPA published the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)" Final Rule (hereinafter referred to as the NSR $PM_{2.5}$ Rule). The 2008 NSR $PM_{2.5}$ Rule revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. As indicated in the 2008 NSR $PM_{2.5}$ Rule, major stationary sources seeking permits must begin directly satisfying the $PM_{2.5}$ requirements, as of the effective date of the rule, rather than relying on PM_{10} as a surrogate, with two exceptions. The first exception was a "grandfathering" provision in the federal PSD program at 40 CFR 52.21(i)(1)(xi). This grandfathering provision applied to sources that had applied for, but had not yet received, a final and effective PSD permit before the July 15, 2008, effective date of the May 2008 final rule. The second exception was that states with SIP-approved PSD programs could continue to implement a policy in which PM_{10} served as a surrogate for $PM_{2.5}$ for up to three years (until May 2011) or until the individual revised state PSD programs for $PM_{2.5}$ are approved by EPA, whichever came first.[3]

On February 11, 2010 (75 FR 6827), EPA proposed to repeal the grandfathering provision for $PM_{2.5}$ contained in the federal PSD program at 40 CFR 52.21(i)(1)(xi) and to end

[3] After EPA promulgated the NAAQS for $PM_{2.5}$ in 1997, the Agency issued a guidance document entitled "Interim Implementation of New Source Review Requirements for $PM_{2.5}$," which allows for the regulation of PM_{10} as a surrogate for $PM_{2.5}$ until significant technical issues were resolved (the "PM_{10} Surrogate Policy"). John S. Seitz, EPA, October 23, 1997.

early the PM_{10} Surrogate Policy applicable in states that have a SIP-approved PSD program. In support of this proposal, EPA explained that the $PM_{2.5}$ implementation issues that led to the adoption of the PM_{10} Surrogate Policy in 1997 had been largely resolved to a degree sufficient for sources and permitting authorities to conduct meaningful permit-related $PM_{2.5}$ analyses. On May 18, 2011 (76 FR 28646), EPA took final action to repeal the $PM_{2.5}$ grandfathering provision at 40 CFR 52.21(i)(1)(xi). This final action ended the use of the 1997 PM_{10} Surrogate Policy for PSD permits under the federal PSD program at 40 CFR 52.21. In effect, any PSD permit applicant previously covered by the grandfathering provision (for sources that completed and submitted a permit application before July 15, 2008)[4] that did not have a final and effective PSD permit before the effective date of the repeal will not be able to rely on the 1997 PM_{10} Surrogate Policy to satisfy the PSD requirements for $PM_{2.5}$ unless the application includes a valid surrogacy demonstration.

The NSR $PM_{2.5}$ Rule also established the following NSR requirements to implement the $PM_{2.5}$ NAAQS: (1) required NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) established significant emission rates for direct $PM_{2.5}$ and precursor pollutants (including sulfur dioxide (SO_2) and oxides of nitrogen (NO_x)); (3) established $PM_{2.5}$ emission offsets; and (4) required states to account for gases that condense to form particles ("condensables") in $PM_{2.5}$ and PM_{10} emission limits in PSD or NNSR permits. In addition, the NSR $PM_{2.5}$ Rule gives states the option of allowing interpollutant trading for the purpose of

[4] Sources that applied for a PSD permit under the federal PSD program on or after July 15, 2008, are already excluded from using the 1997 PM_{10} Surrogate Policy as a means of satisfying the PSD requirements for $PM_{2.5}$. *See* 73 FR 28321.

precursor offsets under the $PM_{2.5}$ NNSR program.[5] Knox County did not adopt this optional interpollutant trading in its March 7, 2017, nor April 17, 2017, SIP revisions. Knox County is thereby being consistent with the State, since Tennessee does not currently have this interpollutant trading approved into its SIP.

2. $PM_{2.5}$ Condensables Correction Rule

Among the changes included in the 2008 NSR $PM_{2.5}$ Rule mentioned above, the EPA revised the definition of "regulated NSR pollutant" for PSD to add a paragraph providing that "particulate matter (PM) emissions, $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures" and that on or after January 1, 2011, "such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, $PM_{2.5}$ and PM_{10} in permits." *See* 73 FR 28321 at 28348 (May 16, 2008). A similar paragraph added to the NNSR rule did not include "particulate matter (PM) emissions." *See* 40 CFR 51.165(a)(1)(xxxvii)(D).

On October 25, 2012 (77 FR 65107), EPA took final action to amend the definition, promulgated in the 2008 NSR $PM_{2.5}$ Rule, of "regulated NSR pollutant" contained in the PM condensable provision at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(i) and appendix S to 40 CFR part 51 (hereinafter referred to as the $PM_{2.5}$ Condensables Correction Rule). The $PM_{2.5}$ Condensables Correction Rule removed the inadvertent requirement in the 2008 NSR $PM_{2.5}$ Rule

[5] On July 21, 2011, as a result of reconsidering the interpollutant trading (IPT) policy, EPA issued a memorandum indicating that the existing preferred precursor offset ratios associated with the IPT policy and promulgated in the NSR $PM_{2.5}$ Rule were no longer considered approvable. The memorandum stated that any $PM_{2.5}$ precursor offset ratio submitted as part of the NSR SIP for $PM_{2.5}$ nonattainment areas would need to be accompanied by a technical demonstration exhibiting how the ratios are suitable for that particular nonattainment area. *See* Memorandum from Gina McCarthy to Regional Air Division Directors, "Revised Policy to Address Reconsideration of Interpollutant Trading Provisions for Fine Particles ($PM_{2.5}$)" (July 21, 2011) (available at https://www3.epa.gov/scram001/guidance/clarification/pm25trade.pdf).

that the measurement of condensable particulate matter be included as part of the measurement and regulation of "particulate matter emissions" under the PSD program. The term "particulate matter emissions" includes only filterable particles that are larger than $PM_{2.5}$ and larger than PM_{10}.

3. $PM_{2.5}$ Subpart 4 Litigation

On January 4, 2013, the D.C. Circuit issued a judgment[6] that remanded EPA's April 25, 2007[7] and May 16, 2008 $PM_{2.5}$ implementation rules implementing the 1997 $PM_{2.5}$ NAAQS. *See Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013). The Court found that because the statutory definition of PM_{10} (see section 302(t) of the CAA) included particulate matter with an aerodynamic diameter less than or equal to 10 micrometers, it necessarily includes $PM_{2.5}$. EPA had developed the 2007 and 2008 Rules (or NSR $PM_{2.5}$ Rule) consistent with the general nonattainment area (NAA) requirements of subpart 1 of Part D, title I, of the CAA. Relative to subpart 1, subpart 4 of Part D, title I includes additional provisions that apply to PM_{10} NAAs and is more specific about what states must do to bring areas into attainment. In particular, subpart 4 includes section 189(e) of the CAA, which requires the control of major stationary sources of PM_{10} precursors (and hence under the court decision, $PM_{2.5}$ precursors) "except where the Administrator determines that such sources do not contribute significantly to

[6] The Natural Resources Defense Council, Sierra Club, American Lung Association, and Medical Advocates for Healthy Air challenged before the D.C. Circuit EPA's April 25, 2007 Rule entitled "Clean Air Fine Particle Implementation Rule" (72 FR 20586), which established detailed implementation regulations to assist states with the development of SIPs to demonstrate attainment for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS and the separate May 16, 2008 NSR $PM_{2.5}$ Rule (which is considered in this proposed rulemaking). This proposed rulemaking only pertains to the impacts of the Court's decision on the May 16, 2008 NSR $PM_{2.5}$ Rule and not the April 25, 2007 implementation rule as the State's May 2, 2011 SIP revision adopts the NSR permitting provisions established in the NSR $PM_{2.5}$ Rule.

[7] This rule is entitled "Clean Air Fine Particle Implementation Rule," Final Rule, 72 FR 20586 (hereinafter referred to as the 2007 Rule).

PM_{10} levels which exceed the standard in the area." The court ordered EPA to re-promulgate the 1997 $PM_{2.5}$ implementation rules pursuant to subpart 4, rather than subpart 1.

On June 2, 2014 (79 FR 31566), EPA published a final rule[8] which, in part, set a December 31, 2014, deadline for states to make any remaining required attainment-related and NNSR SIP submissions, pursuant to and considering the application of subpart 4. Requirements under subpart 4 for a moderate NAA are generally comparable to subpart 1, including: (1) CAA section 189(a)(1)(A) (NNSR permit program); (2) section 189(a)(1)(B) (attainment demonstration or demonstration that attainment by the applicable attainment date is impracticable); (3) section 189(a)(1)(C) (reasonably available control measures (RACM) and reasonably available control technology (RACT)); and (4) section 189(c) (reasonable further progress and quantitative milestones). The additional requirements pursuant to subpart 4 as opposed to subpart 1 correspond to section 189(e) (precursor requirements for major stationary sources). Further additional SIP planning requirements are introduced by subpart 4 in the case that a moderate NAA is reclassified to a serious NAA, or in the event that the moderate NAA needs additional time to attain the NAAQS. The additional requirements under subpart 4 are not applicable for the purposes of CAA section 107(d)(3)(E) in any area that has submitted a complete redesignation request prior to the due date for those requirements. As discussed below, the Knoxville Area[9] has since been redesignated to attainment for the $PM_{2.5}$ NAAQS.

[8] The rule is entitled "Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) and 2006 $PM_{2.5}$ NAAQS", Final Rule, 79 FR 31566 (June 2, 2014). This final rule also identifies the initial classification of current 1997 and 2006 $PM_{2.5}$ nonattainment areas as moderate and the EPA guidance and relevant rulemakings that are currently available regarding implementation of subpart 4 requirements.

[9] The "Knoxville Area" refers to the NAA for the 1997 and 2006 $PM_{2.5}$ NAAQS, which has since been redesignated. The area was comprised of the entire Anderson, Blount, Knoxville, and Loudon Counties, as well as a portion of Roane County, in Tennessee. This NAA was also referred to as the Knoxville-Sevierville-La Follette, Tennessee Area.

4. $PM_{2.5}$ PSD-Increment-SILs-SMC Rule

On October 20, 2010 (75 FR 64863), EPA published a final rulemaking entitled "Prevention of Significant Deterioration (PSD) for Particulate Matter less than 2.5 Micrometers ($PM_{2.5}$)," amending the requirements for $PM_{2.5}$ under the federal PSD program (also referred to as the $PM_{2.5}$ PSD-Increments-SILs-SMC Rule). The October 20, 2010, final rulemaking established the following: (1) $PM_{2.5}$ increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS; (2) $PM_{2.5}$ Significant Impact Levels (SILs) for PSD and NNSR; and (3) Significant Monitoring Concentration (SMC) for PSD purposes.

Subsequently, in response to a challenge to the $PM_{2.5}$ SILs and SMC provisions of the $PM_{2.5}$ PSD-Increment-SILs-SMC Rule, the D.C. Circuit vacated and remanded to EPA the portions of the rule addressing $PM_{2.5}$ SILs, except for the $PM_{2.5}$ SILs promulgated in EPA's NNSR rules at 40 CFR 51.165(b)(2). *See Sierra Club v. EPA*, 705 F.3d 458, 469 (D.C. Cir. 2013). The D.C. Circuit also vacated the parts of the rule establishing a $PM_{2.5}$ SMC for PSD purposes. *Id.* EPA removed these vacated provisions in a December 9, 2013 (78 FR 73698), final rule.

The $PM_{2.5}$ SILs promulgated in EPA's NNSR regulations at 40 CFR 51.165(b)(2) were not vacated by the D.C. Circuit because unlike the SILs promulgated in the PSD regulations (40 CFR 51.166, 52.21), the SILs promulgated in the NNSR regulations at 40 CFR 51.165(b)(2) do not serve to exempt a source from conducting a cumulative air quality analysis. Rather, the SILs promulgated at 40 CFR 51.165(b)(2) establish levels at which a proposed new major source or major modification located in an area designated as attainment or unclassifiable for any NAAQS would be considered to cause or contribute to a violation of a NAAQS in any area. For this

reason, the D.C. Circuit left the $PM_{2.5}$ SILs at 40 CFR 51.165(b)(2) in place.

Consistent with the D.C. Circuit decision, and EPA's removal, Knox County did not adopt these vacated portions of the $PM_{2.5}$ PSD-Increment-SILs-SMC Rule, regarding the $PM_{2.5}$ SILs and SMC provisions for PSD permitting. Knox County did adopt the remaining portions of the $PM_{2.5}$ PSD-Increment-SILs-SMC Rule, which includes the $PM_{2.5}$ PSD Increments and the NNSR portion of the $PM_{2.5}$ SILs provisions.

C. 1997 8-Hour Ozone NAAQS Phase 2 Rule

On November 29, 2005 (70 FR 71612), EPA published a final rule entitled "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline" (hereinafter referred to as the Phase 2 Rule). The Phase 2 Rule addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS[10] such as reasonably available control technology, reasonably available control measures, reasonable further progress, modeling and attainment demonstrations, NSR, and the impact to reformulated gasoline for the 1997 8-hour ozone NAAQS transition. The NSR permitting requirements established in the rule included the following provisions: (1) recognized NOx as an ozone precursor for PSD purposes; (2) established major stationary thresholds (marginal, moderate, serious, severe, and extreme NAA classifications) in the NNSR rules; (3) established significant emission rates for the 8-hour

[10] On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million – also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as unclassifiable/attainment, nonattainment and unclassifiable for the 1997 8-hour ozone NAAQS. In addition, on April 30, 2004 (69 FR 23951), as part of the framework to implement the 1997 8-hour ozone NAAQS, EPA promulgated an implementation rule in two phases (Phase I and II). The Phase I Rule (effective on June 15, 2004), provided the implementation requirements for designating areas under subpart 1 and subpart 2 of the CAA.

ozone, PM_{10} and carbon monoxide NAAQS; and (4) revised the criteria for crediting emission reductions credits from operation shutdowns and curtailments as offsets, and changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone NAA.

The March 7, 2017, SIP submittals requesting adoption of Knox County regulations 41 and 45 adopt all the NSR provisions of the Phase 2 Rule as they appear in the federal NNSR and PSD rules, effectively recognizing NO_x as a precursor to ozone as well as establishing major stationary thresholds, significant emission rates, and offset ratios. The adoption of these provisions is consistent with the federal NSR rules as well as TDEC's rules.

D. Greenhouse Gases and Plant-wide Applicability Limits

On January 2, 2011, emissions of greenhouse gases (GHGs) were, for the first time, covered by the PSD and title V operating permit programs.[11] To establish a process for phasing in the permitting requirements for stationary sources of GHGs under the CAA PSD and title V programs, on June 3, 2010 (75 FR 31514), the EPA published a final rule entitled "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (hereinafter referred to as the GHG Tailoring Rule). In Step 1 of the GHG Tailoring Rule, which began on January 2, 2011, the EPA limited application of PSD and title V requirements to sources of GHG emissions only if they were subject to PSD or title V "anyway" due to their emissions of pollutants other than GHGs. These sources are referred to as "anyway sources."

In Step 2 of the GHG Tailoring Rule, which applied as of July 1, 2011, the PSD and title V permitting requirements applied to some sources that were classified as major sources based solely on their GHG emissions or potential to emit GHGs. Step 2 also applied PSD permitting requirements to modifications of otherwise major sources that would increase only GHG

[11] See the rule entitled "Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs," Final Rule, 75 FR 17004 (April 2, 2010).

emissions above the level in the EPA regulations. EPA generally described the sources covered by PSD during Step 2 of the GHG Tailoring Rule as "Step 2 sources" or "GHG-only sources."

Subsequently, EPA published the GHG Step 3 Rule on July 12, 2012 (77 FR 41051). In this rule, EPA decided against further phase-in of the PSD and title V requirements for sources emitting lower levels of GHG emissions. Thus, the thresholds for determining PSD applicability based on emissions of GHGs remained the same as established in Step 2 of the Tailoring Rule.

In addition, the July 12, 2012 (77 FR 41051), final rule revised EPA regulations under 40 CFR part 52 for establishing PALs for GHG emissions. A PAL establishes a site-specific plantwide emission level for a pollutant that allows the source to make changes at the facility without triggering the requirements of the PSD program, provided that emissions do not exceed the PAL level. Under EPA's interpretation of the federal PAL provisions, such PALs are already available under PSD for non-GHG pollutants and for GHGs on a mass basis. EPA revised the PAL regulations to allow for GHG PALs to be established on a carbon dioxide equivalent (CO_2e)[12] basis as well. EPA finalized these changes in an effort to streamline federal and SIP PSD permitting programs by allowing sources and permitting authorities to address GHGs using PALs in a manner similar to the use of PALs for non-GHG pollutants.

On June 23, 2014, the U.S. Supreme Court addressed the application of stationary source permitting requirements to GHG emissions in *Utility Air Regulatory Group (UARG) v. EPA*, 134 S. Ct. 2427 (2014). The Supreme Court upheld EPA's regulation of Step 1 – or "anyway" sources – but held that EPA may not treat GHGs as air pollutants for the purposes of determining whether a source is a major source (or a modification thereof) and thus require the source to

[12] CO_2 equivalent (CO_2e) emissions refers to emissions of six recognized GHGs other than CO_2 which are scaled to equivalent CO_2 emissions by relative global warming potential values, then summed with CO_2 to determine a total equivalent emissions value. *See* 40 CFR 51.166(b)(48)(ii) and 52.21(b)(49)(ii).

obtain a PSD or title V permit. Therefore, the Court invalidated PSD and title V permitting requirements for Step 2 sources.

In accordance with the Supreme Court decision, on April 10, 2015, the D.C. Circuit issued an Amended Judgment vacating the regulations that implemented Step 2 of the GHG Tailoring Rule, but not the regulations that implement Step 1 of the GHG Tailoring Rule. *Coalition for Responsible Regulation, Inc. v. EPA*, 606 Fed. Appx. 6, 7 (D.C. Cir. 2015). With respect to Step 2 sources, the D.C. Circuit's Judgment vacated the EPA regulations under review (including 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v)) "to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emissions increase from a modification." *Id.* at 7-8.

EPA promulgated a final rule on August 19, 2015, entitled "Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Certain Vacated Elements." *See* 80 FR 50199 (August 19, 2015). The rule removed from the Federal regulations the portions of the PSD permitting provisions for Step 2 sources that were vacated by the D.C. Circuit (i.e., 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v)). EPA therefore no longer has the authority to conduct PSD permitting for Step 2 sources, nor can EPA approve provisions submitted by a state for inclusion in its SIP providing this authority. In addition, on October 3, 2016 (81 FR 68110), EPA proposed to revise provisions in the PSD permitting regulations applicable to GHGs to fully conform with *UARG* and the Amended Judgment, but those revisions have not been finalized.

In Tennessee's March 7, 2017, and April 17, 2017, SIP submittals, Knox County adopts Step 1 of the GHG Tailoring Rule only. It does not adopt the language pertaining to the Step 2,

nor Step 3. This is consistent with Tennessee's rules which do not adopt Step 3 provisions and which include an automatic rescission clause that renders the Step 2 language ineffective at the state level due to the vacatur of Step 2 by the D.C. Circuit.

E. Equipment Replacement Provisions

Under Federal regulations, certain activities are not considered to be a physical change or a change in the method of operation at a source, and thus do not trigger NSR review. One category of such activities is routine maintenance, repair and replacement (RMRR). On October 27, 2003 (68 FR 61248), EPA published a rule titled "Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion" (hereinafter referred to as the ERP Rule). The ERP Rule provided criteria for determining whether an activity falls within the RMRR exemption. The ERP Rule provided a list of equipment replacement activities that are exempt from NSR permitting requirements, while ensuring that industries maintain safe, reliable, and efficient operations that will have little or no impact on emissions. Under the ERP Rule, a facility undergoing equipment replacement would not be required to undergo NSR review if the facility replaced any component of a process unit with an identical or functionally equivalent component. The rule included several modifications to the NSR rules to explain what would qualify as an identical or functionally equivalent component.

Shortly after the October 27, 2003, rulemaking, several parties filed petitions for review of the ERP Rule in the D.C. Circuit. The D.C. Circuit stayed the effective date of the rule pending resolution of the petitions. A collection of environmental groups, public interest groups, and States, subsequently filed a petition for reconsideration with EPA, requesting that the Agency reconsider certain aspects of the ERP Rule. EPA granted the petition for reconsideration

on July 1, 2004 (69 FR 40278).[13] After the reconsideration, EPA published its final response on June 10, 2005 (70 FR 33838), which stated that the Agency would not change any aspects of the ERP. On March 17, 2006, the D.C. Circuit acted on the petitions for review and vacated the ERP Rule.[14] Knox County did not adopt the vacated language from the ERP Rule in Tennessee's March 7, 2017, nor April 17, 2017, SIP submittals.

III. Analysis of State's Submittal

A. Tennessee's March 7, 2017, NNSR and PSD Submittals

Knox County currently has a SIP-approved NSR program for new and modified stationary sources, including preconstruction regulations for PSD found in Section 45.0 - "Prevention of Significant Deterioration," and for NNSR found in Section 41.0 - "Regulations for the Review of New Sources." Tennessee's March 7, 2017, SIP revisions made changes to Section 41.0 and Section 45.0 to address changes to the federal NSR regulations, as promulgated by EPA in the 2002 NSR Reform Rules, and subsequent changes in other relevant rulemakings as described in section II, above.

As part of the changes to Section 41 and Section 45, Knox County adopted all the necessary provisions of the federal NNSR rules (found in 40 CFR 51.165) and the federal PSD rules (found in 40 CFR 51.166) to make them consistent with, and in some cases more stringent than, the federal rules. These changes included the adoption of several definitions in the federal PSD and NNSR rules, such as the definition of "regulated NSR pollutant," as well as provisions

[13] The reconsideration granted by EPA opened a new 60-day public comment period, and carried out a new public hearing, only on three issues of the ERP. These three issues included: (1) The basis for determining that the ERP was allowable under the CAA; (2) The basis for selecting the cost threshold (20 percent of the replacement cost of the process unit) that was used in the final rule to determine if a replacement was routine; and (3) A simplified procedure for incorporating a Federal Implementation Plan into State Plans to accommodate changes to the NSR rules.

[14] *New York v. EPA*, 443 F.3d 880 (D.C. Cir. 2006).

regarding major NSR applicability procedures, actual-to-projected-actual applicability tests, PALs, and recordkeeping. Slight differences between the Knox County NSR rules and the federal rules are discussed below in Section III.A.1. – 3.

Additionally, in the changes included in the March 7, 2017, SIP submittal, Knox County adopted the provisions from the Ozone Phase 2 Rule, as discussed in section II.C of this rulemaking. Consistent with TDEC's rules and the federal NNSR and PSD rules, Knox County adopted the same language regarding the Phase 2 rule found at 40 CFR 51.165 and 40 CFR 51.166. This includes amendments found in the federal NNSR rules in § 51.165(a)(1)(iv)(A)(*1*) through (*3*), (a)(1)(v)(E) and (F), (a)(1)(x), (a)(3)(ii)(C), and (a)(8) and (9), as well as the federal PSD rules in § 51.166(b)(1)(ii), (b)(2)(ii), (b)(23)(i), and (b)(49)(i).

EPA believes that the proposed approval of these changes, including all amendments mentioned in the following sections, will not have a negative impact on air quality in the County.

First, with these proposed changes, the local Knox County regulations will now be consistent with the State's current SIP-approved NSR program, which is slightly more stringent than the federal rules. Tennessee's NSR program already underwent updates concerning the 2002 NSR reform on September 14, 2007 (72 FR 52472).

Second, Knox County currently does not have any nonattainment areas, and all previous nonattainment areas have been redesignated to attainment due to clean data. Table 1, below, shows the most recent air quality monitoring design values (DV), in micrograms per meter cubed ($\mu g/m^3$) and parts per billion (ppb), and the most current corresponding NAAQS in each redesignated (i.e., maintenance) area in Knox County.[15] This data shows that air quality in the Knox County area has been improving over the years, and most recently the entire county has

[15] Air quality design values for all criteria air pollutants are available at: https://www.epa.gov/air-trends/air-quality-design-values.

been designated as attainment/unclassifiable for both the 2010 1-hour SO_2 and 2015 8-hour Ozone NAAQS as well.

Table 1. Current Air Quality Status in Knox County for Maintenance Areas

Maintenance Areas	NAAQS for Which Area is Maintenance	Status	Current NAAQS	2015-2017 Design Value	Margin Relative to Current NAAQS with 2014-2017 DV
Knoxville	2008 ozone (75.0 ppb)	Redesignated	70 ppb	68 ppb	-2 ppb (3%)
Knoxville	1997 annual $PM_{2.5}$ (15.0 µg/m^3)	Redesignated	12.0 µg/m^3	10 µg/m^3	-2 µg/m^3 (17%)
Knoxville	2006 24-hour $PM_{2.5}$ (35 µg/m^3)	Redesignated	35 µg/m^3	34 µg/m^3	-1 µg/m^3 (3%)

Finally, any projects (new construction or modifications) that would not be subject to major NSR would still be subject to preconstruction review and permitting requirements under Knox County's SIP-approved minor NSR regulations found in Section 25 of the Knox County Air Quality Management Regulations. Under the current SIP-approved minor NSR regulations, no construction or modification shall begin unless a construction permit has been issued by the Director of the Knox County Air Quality Management Division (Director), and no permit shall be issued unless the applicant can demonstrate that the source can be expected to comply with any applicable regulations, including the NAAQS. Furthermore, the Director may require additional and/or more restrictive permit conditions than required by the Knox County regulations, and the minor source construction permit can be invalidated if the source violates any applicable regulation. Therefore, these revisions should not interfere with attainment or maintenance or any other requirement of the CAA.

Although in most cases Knox County adopted the federal rules as enacted at §§ 51.165 and 51.166, certain portions were modified or not adopted. These differences from the federal NNSR and PSD rules include: 1) adopting a modified definition of "baseline actual emissions,"

more details of which are included in this Section; 2) not adopting the stayed language in the Fugitive Emission Rule; and 3) not adopting changes from a May 1, 2007, final rule regarding facilities that produce ethanol through natural fermentation.[16] Additional differences from the federal NNSR rules in Section 41 of Knox County's regulations, particularly regarding the implementation of the $PM_{2.5}$ NAAQS, are covered in Tennessee's April 17, 2017, SIP revision and are discussed below in section III.B of this rulemaking.

1. Definition of "baseline actual emissions"

Regarding the definition of "baseline actual emissions," as promulgated in 40 CFR 51.165(a)(1)(xxxv) and 40 CFR 51.166(b)(47), Knox County adopted into Section 41 and Section 45 of the Knox County Air Quality Management Regulations a definition mostly consistent with the federal definition. However, Knox County excluded a portion of the definition that would allow for different 24-month periods to be chosen for each regulated NSR pollutant when calculating baseline actual emissions for either PSD or NNSR applicability determinations.

Knox County's adoption of "baseline actual emissions" in Sections 41 and 45 excludes the last sentence of § 51.165(a)(1)(xxxv)(A)(*3*) and (a)(1)(xxxv)(B)(*4*) of the federal NNSR rules and § 51.166(b)(47)(i)(*c*) and (b)(47)(ii)(*d*) of the federal PSD rules, which states that "a different consecutive 24-month period can be used for each regulated NSR pollutant." Instead, Knox County adopts specific language at Section 41.1.A.5(3) and Section 45.1.A.5.a(3) as follows: "For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the

[16] The May 1, 2007, final rule finalized changes to the definition of "chemical process plants" as it applies to the federal PSD, NNSR and Title V programs, including applicability thresholds for PSD and the treatment of fugitive emissions in determining applicability for major NSR and title V.

emissions units being changed." With this difference in the definition, Knox County is not allowing for different baseline periods to be chosen for a single project that involves multiple units, which removes an additional flexibility built into the federal rules and makes the local rules slightly more stringent than the federal rules. Knox County's definition is consistent with TDEC's SIP-approved definition of "baseline actual emissions", which also does not allow for different pollutant-specific 24-month baseline periods. For the reasons discussed above, EPA is proposing to approve the changes to NNSR and PSD rules into the Knox County portion of the Tennessee SIP.

EPA has determined that this difference in determining major NSR applicability with the definition of "baseline actual emissions" is consistent with Tennessee's SIP-approved rules and is more stringent than the current federal rules. Therefore, EPA is proposing to approve the changes to the definition, including this difference from the federal rules, into the Knox County portion of the Tennessee SIP.

2. Fugitive Emissions Rule

As mentioned in Section II.A of this rulemaking, a portion of the Fugitive Emissions Rule was stayed indefinitely on March 30, 2011. For this reason, Knox County did not adopt into Section 41 or Section 45 of the Knox County Air Quality Management Regulations the language found in the federal NNSR rules at 40 CFR 51.165(a)(1)(v)(G) and (a)(1)(vi)(C)(*3*), as well as in the federal PSD rules at 40 CFR 51.166(b)(2)(v) and (b)(3)(iii)(*d*), which are part of the stayed Fugitive Emissions Rule provisions that can still be found in the CFR.

Given that the omitted language has been stayed indefinitely, EPA is proposing to approve the changes into the Knox County portion of the Tennessee SIP as consistent with federal requirements, and the Tennessee SIP.

3. GHG Tailoring Rule

As mentioned in Section II.D of this proposed rulemaking, Knox County adopted the provisions of the GHG Tailoring Rule, Step 1, but has not adopted Step 2 or Step 3. Consistent with Step 1 of the GHG Tailoring Rule, Knox County has adopted provisions in its PSD rules, found at Section 45 of the Knox County Air Quality Management Regulations, that require sources of GHG emissions to regulate GHGs only if they were subject to PSD "anyway" due to their emissions of pollutants other than GHGs. These sources are referred to as "anyway sources."

In Step 2 of the GHG Tailoring Rule, these PSD requirements for GHGs applied to some sources that were known as "GHG-only sources." Since the D.C. Circuit vacated the GHG Step 2 Rule on April 10, 2015, EPA has subsequently removed the provisions from this portion of the GHG Tailoring Rule from the Federal PSD rules. With respect to Step 2, Knox County's rules are consistent with Tennessee's rules. Although Tennessee currently has language related to Step 2 in its SIP, it also included an automatic rescission clause that renders any language pursuant to Step 2 ineffective at the state level due to the vacatur of Step 2 by the D.C. Circuit.

Finally, Knox County did not adopt the GHG Step 3 Rule, which, among other things, established PALs for GHG emissions on a CO_2e basis. The GHG PALs regulations of the GHG Step 3 Rule do not add new requirements for sources or modifications. Rather, the PALs provisions provide increased flexibility to sources that wish to address their GHG emissions in a PAL by using CO_2e instead of a mass basis. Given that these provisions are not a requirement, but rather an optional way to address GHG PALs, EPA believes that not adopting the GHG Step 3 provisions into the Knox County portion of the Tennessee SIP is acceptable and will not interfere with Knox County's ability to meet all applicable GHG requirements. In addition,

Knox County is being consistent with Tennessee's rules, which do not include the GHG Step 3 provisions.

For the reasons discussed above, EPA is proposing to approve the Step 1 provisions of the GHG Tailoring Rule into the Knox County portion of the Tennessee SIP, as presented in the March 7, 2017 SIP submittal.

B. Tennessee's April 17, 2017, NNSR Changes

The April 17, 2017, SIP revision included two changes to the Knox County portion of the Tennessee SIP, one making additional changes to Section 41, and another updating Section 25.0 entitled "Permits" (hereinafter referred to as Section 25). The revisions to Section 41 include additional changes which are meant to be incorporated with the March 7, 2017, revisions of this section.

Although the March 7, 2017, SIP revision updates Knox County's NNSR regulation found in Section 41, it does not include some provisions that were part of the NSR $PM_{2.5}$ Rule, or corrections related to the $PM_{2.5}$ subpart 4 litigation, as described in section II.B, above.[17] The April 17, 2017, SIP revision adds the following elements: 1) Under Section 41.1-A.36.a, Knox County adds emissions thresholds (in tons per year) for $PM_{2.5}$ and its precursors, for sources to be considered a "major stationary source" in any area designated as a serious $PM_{2.5}$ nonattainment area; 2) Under Section 41.1-A.56.a(7), Knox County adds emissions increase thresholds under $PM_{2.5}$, for volatile organic compounds (VOC) and Ammonia (presumptively regulating both as precursors to $PM_{2.5}$), for an emissions increase to be considered "significant;"

[17] Knox County did not adopt the vacated elements of the $PM_{2.5}$ PSD-Increment-SILs-SMC Rule. However, Knox County adopted the remaining elements of the NSR $PM_{2.5}$ Rule, while incorporating the requirements pursuant to Subpart 4 of Part D of the CAA, as prescribed following the $PM_{2.5}$ Subpart 4 litigation, and the correction to requirements promulgated in the $PM_{2.5}$ Condensables Correction Rule. For more details, see Section II.B of this rulemaking.

and 3) Under Section 41.3-A, Knox County adds a sentence clarifying the applicability of NSR in nonattainment areas and adds references to the new definitions of Section 41.1-A.52.

As part of the $PM_{2.5}$ Subpart 4 litigation mentioned in Section II.B, above, EPA published its June 2, 2014, final rule re-promulgating the NSR $PM_{2.5}$ implementation rule and set a deadline of December 31, 2014, for states to make any remaining required attainment-related and NNSR SIP submissions, pursuant to and considering the application of subpart 4. At the time of the June 2, 2014, final rulemaking, the Knoxville Area was designated nonattainment for both the 1997 Annual $PM_{2.5}$ NAAQS and 2006 24-hour $PM_{2.5}$ NAAQS, under subpart 1.

Knox County did not meet the December 31, 2014, deadline to submit its attainment and NNSR SIP submissions pursuant to subpart 4. However, on December 20, 2016, Knox County, through Tennessee, submitted maintenance plans and redesignation requests to EPA regarding both standards, pursuant to subpart 1 and subpart 4 of Part D of the CAA. Included in the request were reasonably available control measure (RACM) determinations as well as motor vehicle emission budgets for NOx and $PM_{2.5}$ for the years 2014 and 2008. Since then, the area has been redesignated to attainment for both the 1997 Annual $PM_{2.5}$ NAAQS and 2006 24-hour $PM_{2.5}$ NAAQS. Specifically, the Knoxville Area was redesignated to attainment on August 28, 2017, for the 2006 24-hour $PM_{2.5}$ NAAQS, and on August 29, 2017, for the 1997 Annual $PM_{2.5}$ NAAQS.

Additionally, as mentioned above, the April 17, 2017, SIP revision adds emissions thresholds (in tons per year) for $PM_{2.5}$ and its precursors for sources to be considered a "major stationary source" in any area designated as a serious $PM_{2.5}$ nonattainment area, as well as emissions increase thresholds under $PM_{2.5}$, for VOC and Ammonia (presumptively regulating both as precursors to $PM_{2.5}$), for an emissions increase to be considered "significant." Although

Knox County currently has no NAAs for $PM_{2.5}$, and has no major stationary sources of ammonia, it still included thresholds for regulating ammonia as a precursor to $PM_{2.5}$ and provided a technical justification for what it considers "significant" in terms of emissions of ammonia.

As explained in the technical justification, which can be found in the docket for this proposed action, Knox County opted to set the emissions threshold at that of the other $PM_{2.5}$ precursors (NOx, SO_2, and VOC) set in federal requirements, and therefore set it at 40 tons per year. According to Knox County, this is a conservative approach since the area currently has no major stationary sources of ammonia. EPA agrees with this determination and believes that the 40 ton per year threshold will be sufficient to determine a significant emissions increase. EPA also agrees that this is a conservative approach because, based on the requirements of 40 CFR 51.165(a)(1)(x)(F), Knox County was not required to establish a definition of "significant" for ammonia given that they currently have no nonattainment areas for $PM_{2.5}$ and have no major stationary sources of ammonia in the county. As previously mentioned, Knox County does not have any existing major stationary sources of ammonia, and does not currently have any $PM_{2.5}$ NAAs. Nevertheless, if Knox County were to begin operation of a major stationary source of ammonia, they would have a reasonable threshold for determining major modifications of ammonia for any future $PM_{2.5}$ NAAs.

These changes to Knox County's Section 41, together with the changes mentioned above in section III.A., make Knox County's NNSR regulations consistent with the federal requirements (and in some cases more stringent, as is the case of the definition of "baseline actual emissions"), and also consistent with TDEC's NNSR rules. With the exception of the vacated or stayed portions, as mentioned in section II, Knox County has adopted all other necessary provisions of the federal NNSR rules, including those promulgated by the NSR reform

rules and the NSR $PM_{2.5}$ Rule. Therefore, EPA is proposing to approve the aforementioned changes to the Knox County portion of the Tennessee SIP.

C. Tennessee's April 17, 2017, Minor Source Permit Changes

As mentioned above, on April 17, 2017, Tennessee submitted, on behalf of Knox County, two additional SIP revisions to update Knox County's Air Quality Management Regulations, Section 41.0 and Section 25.0. As part of the revisions to Section 25, Knox County included changes to Sections 25.1 – "Construction Permits," 25.3 – "Operating Permits," and 25.9 – "Minor Source and Synthetic Minor Source Emission Fees" (hereinafter referred to as Section 25.1, Section 25.3 and Section 25.9, respectively).

In Section 25.1, Knox County added two paragraphs, 25.1.F and 25.1.G, in order to provide more detail on the necessity of a construction permit, and revised paragraph 25.1.C in order to clarify the duration of validity and expiration of a construction permit if construction is not commenced within a certain timeframe or is interrupted for a certain timeframe. Paragraph 25.1.F establishes that construction of a new source, or modification of an existing source, must be in accordance with the construction permit and all applicable Knox County Air Quality Management Regulations. Paragraph 25.1.G establishes that a construction permit may be issued to a source that has already been constructed in order to assure that all regulatory requirements are met and asserts that no operating permit will be issued until the construction permit requirements are met.

In the current SIP-approved version of paragraph 25.1.C, Knox County sets a duration of 1 year for a construction permit, which has to be renewed annually. With the changes in the April 17, 2017, SIP revision, Knox County establishes that a construction permit will be invalidated if construction is not commenced within 18 months, if it is discontinued for more

than 18 months, or if the construction is not completed within a reasonable timeframe. Nevertheless, the revisions establish that a permit may be extended by the Director , if such an extension is shown to be justified. The revision to the applicable timeframe of minor source construction permits is consistent with those required for major NSR under the current SIP-approved version of both the Tennessee SIP and the Knox County portion of the Tennessee SIP.

In section 25.3, Knox County revised paragraphs 25.3.A and 25.3.C, providing timeframes for applying and issuing operating permits, and added two new paragraphs, 25.3.M and 25.3.N, which include additional requirements and clarifications for operating permits and stack sampling reports. Under the current SIP-approved version of paragraph 25.3.A, Knox County simply establishes the requirement that a person planning to operate a new or modified source, must "apply for and receive" an operating permit. With the changes in the April 17, 2017, SIP revision, Knox County included an additional requirement which, provided that paragraph 25.3.C is complied with, requires the operating permit to be obtained within 90 days after the initial start-up of a source or modification. Additionally, if stack sampling is required for the application, this time period may be extended to 60 days after the stack sampling report is required to be submitted.

Under current SIP-approved version of paragraph 25.3.C, Knox County establishes a timeframe for "applying" for an operating permit only when renewing an existing permit. The paragraph only sets a required timeframe of 30 days prior to the expiration of an existing operating permit. But with the changes in the April 17, 2017, SIP revision, Knox County included two additional conditions: 1) When applying for a new operating permit, the applicant must submit the application no later than 14 days after initial start-up; and 2) When stack sampling is required as part of a construction permit, the time period for applying for the

operating permit is extended to the time specified in the construction permit as the date that the sampling reports are required to be submitted.

In the two paragraphs that Knox County added to this section, 25.3.M and 25.3.N, the local agency has added additional clarification on operating permits. In Paragraph 25.3.M, Knox County included a requirement that no source can operate without an operating permit, but reiterates that a new source or modification may operate with a construction permit for a limited period of time, in order to provide the source an opportunity to apply for and obtain a new operating permit. The conditions and time limits for operating with a construction permit are established in paragraph 25.3.A. In paragraph 25.3.N, Knox County clarifies that any stack sampling reports that were required as part of a construction permit, must be part of the operating permit application for that source, and that any stack sampling required as part of an existing operating permit, must be part of the renewal application of the operating permit. These changes to Sections 25.1 and 25.3 are meant to establish reasonable timeframes for the validity of construction permits and to provide clarification for sources applying for and obtaining operating permits.

EPA is proposing to approve the aforementioned changes into the Knox County portion of the Tennessee SIP. The federal requirements for state minor NSR programs, outlined in 40 CFR 51.160 through 51.164, are considerably less prescriptive than those for major sources to facilitate the development of programs that best reflect a state's chosen approach to achieving attainment and maintenance of the NAAQS. As such, states may customize their minor NSR programs as long as they meet the minimum requirements, as Knox County is here.

Finally, in Section 25.9, Knox County removed the language in paragraphs 25.9.F.8 through 25.9.F.10, and substitutes it with "Reserved." The removed language simply established

several permit fees that expired on December 31, 2016, which a source, operator, or owner had to pay to the Department of Air Quality Management of Knox County. Given that these permit fees have since expired, EPA agrees with Knox County's decision to remove these paragraphs. Moreover, permit fees need not be included explicitly in the SIP. EPA is therefore proposing to approve the removal of this language from the Knox County portion of the Tennessee SIP.

F. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Knox County's Air Quality Management Regulations, Section 25.0 – "Permits," state effective January 18, 2017, Section 41.0 – "Regulations for the Review of New Sources," state effective January 18, 2017, and Section 45.0 – "Prevention of Significant Deterioration," state effective July 20, 2016. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

G. Proposed Action

EPA is proposing to approve the aforementioned changes to the Knox County portion of the Tennessee SIP. EPA is proposing to approve the changes presented in the March 7, 2017, and April 17, 2017, SIP submittals that make changes to Knox County's Air Quality Management Regulations, Section 41.0 entitled "Regulations for the Review of New Sources," Section 45.0 entitled "Prevention of Significant Deterioration," and Section 25.0 entitled "Permits." These SIP revisions are meant to address several changes to the federal NSR regulations, as promulgated by EPA on December 31, 2002, and reconsidered with minor

changes on November 7, 2003, which are commonly referred to as the "2002 NSR Reform Rules," as well as subsequent changes to the federal NSR regulations as described in Section II of this proposed rulemaking. Finally, these revisions are meant to make Knox County's NSR regulations consistent with those of the State of Tennessee.

H. 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. *See* 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. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 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).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: June 8, 2018.

Onis "Trey" Glenn, III,

Regional Administrator,

Region 4.

[FR Doc. 2018-13144 Filed: 6/19/2018 8:45 am; Publication Date: 6/20/2018]