



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2018-0513; FRL-9989-17-Region 3]

Approval and Promulgation of Air Quality Implementation Plans;

Pennsylvania; Commercial Fuel Oil Sulfur Limits for Combustion Units in Allegheny

County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision updates Allegheny County's portion of the Pennsylvania SIP, which includes regulations concerning sulfur content in fuel oil. This revision will implement low sulfur fuel oil provisions that will reduce the amount of sulfur in fuel oils used in combustion units which will aid in reducing sulfates that cause decreased visibility. This revision will strengthen the Pennsylvania SIP. This action is being taken under the Clean Air Act (CAA).

DATES: Written 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. EPA-R03-OAR-2018-0513 at <http://www.regulations.gov>, or via email to Spielberger.susan@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, 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, please contact the person identified in the “For Further Information Contact” section. For 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: Erin Trouba, (215) 814-2023, or by e-mail at trouba.erin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 8, 2018, the Allegheny County Health Department (ACHD) through the Pennsylvania Department of Environmental Protection (PADEP) submitted a formal revision to the Pennsylvania SIP. The SIP revision consists of an amendment to ACHD regulations under Article XXI (Air Pollution Control) which adds sections to implement the use of low sulfur fuel oils used in combustion units in Allegheny County, adding sampling and testing methods, and amending associated definitions.

Sulfur dioxide (SO₂) emissions contribute to the formation of fine particulate matter (PM_{2.5}) and sulfates in the atmosphere, and subsequently to the formation of regional haze. Regional haze is visibility impairing pollution that scatters and absorbs light. The pollutants that

cause visibility impairment come from sources and activities that emit fine particles and their precursors, SO₂, PM_{2.5}, nitrogen oxides (NO_x), and volatile organic compounds (VOCs).

The May 8, 2018 SIP revision included revisions to Article XXI to implement low sulfur fuel oil provisions in Allegheny County that align with the state-wide low sulfur fuel oil provisions in 25 Pa Code Section 123.22 (Section 123.22), which is part of the Pennsylvania SIP. The SIP revision seeks to add Sections 2104.10 (Commercial Fuel Oil) and 2107.16 (Sulfur in Fuel Oil) of Article XXI to the Pennsylvania SIP and amend, within the SIP, Section 2101.20 (Definitions) of Article XXI.¹

EPA previously approved amendments to Pennsylvania's low sulfur fuel oil regulation in July 2014. The regulations in 25 Pa Code Section 123.22 specified and established SO₂ emission levels and maximum allowable sulfur contents for certain fuel oil types by specific air basins through June 30, 2016, and consistent state-wide maximum allowable sulfur contents for certain fuel oil types beginning July 1, 2016. 79 FR 39330 (July 10, 2014). The July 2014 regulation established maximum allowable sulfur-content in fuels prior to June 30, 2016 in all Pennsylvania air basins except Allegheny County, Lower Beaver Valley, and Monongahela Valley. It also established a statewide maximum allowable sulfur content in fuel oil, including Allegheny County, beginning on July 1, 2016.

II. Summary of SIP Revision and EPA Analysis

Through the May 2018 SIP revision submittal, Pennsylvania seeks to add Sections 2104.10 and 2107.16 of ACHD's Article XXI to the Pennsylvania SIP. Section 2104.10 implements low sulfur fuel oil provisions that will reduce the amount of sulfur in fuel oils that are offered for sale, delivered for use, exchanged in trade or permitted to use in Allegheny County, Pennsylvania. Section 2104.10(a) establishes maximum allowable sulfur content for

¹ These revisions became effective within Allegheny County as of December 8, 2017.

commercial fuel oil, expressed as parts per million (ppm) by weight or percentage by weight, for number 2 and lighter distillate oil to 0.05 percent sulfur content by weight (500 ppm), number 4 residual oil to 0.25 percent sulfur content by weight (2,500 ppm), and 0.5 percent sulfur content by weight (5,000 ppm) for number 5 and number 6 and heavier commercial fuel oils by no later than July 1, 2016. Commercial fuel oil stored by the ultimate consumer in the County prior to the applicable compliance date may be used after the applicable compliance date if the fuel oil met the applicable maximum allowable sulfur content at the time it was stored.

The provision in Section 2104.10(a)(2) of Article XXI allows for a temporary suspension or increase to the maximum allowable sulfur content for a commercial fuel oil according to provisions set forth in 25 Pa Code Section 123.22(d)(2)(iii) and (iv). In the event that compliant fuel is not reasonably available in the air basin, and a written waiver request is appropriately filed, and subsequently approved by PADEP, a suspension of these sulfur levels can be granted for the shortest duration in which adequate supplies can be made reasonably available, but for no more than 60 days.

Section 2104.10(c) and (d) of Article XXI establish sampling, testing, recordkeeping, and reporting requirements. Recordkeeping and reporting requirements in Section 2104.10(d) apply to transferors and transferees in the manufacture and distribution chain for commercial fuel oil from the refinery owner or operator to the ultimate consumer. If any transferor accepts a shipment of commercial fuel oil of a shipment that lacks the required records specified in Section 2104.10(d), they are required to test for sulfur content under Section 2104.10(c)(3).

Definitions for terminology which relate to reporting and recordkeeping requirements were added. Pennsylvania's May 2018 SIP revision submittal also seeks to amend Section 2101.20 (Definitions) to add the following new terms: (1) "Commercial fuel oil;" (2)

“Noncommercial fuel;” (3) “Transferee;” (4) “Transferor;” and (5) “Ultimate consumer.”

Additionally, the revision to Section 2101.20 (Definitions) of Article XXI seeks to amend the definition of the following terms to provide clarity and support the amendments to Section 2104.10 and Section 2107.16: (1) “Carrier;” (2) “Distributor;” (3) “Retail outlet;” and (4) “Terminal.”

Section 2107.16 of Article XXI establishes the sampling methods that must be used. Refinery owners and operators who produce commercial fuel oil intended for use or used in Allegheny County are required to sample, test and calculate the actual sulfur content of each batch of the commercial fuel oil according to the methods established in Section 2107.16. The regulations ACHD seeks to add to the Pennsylvania SIP require the use of various American Standards of Testing Materials (ASTM) methods for the sampling of petroleum and for the determination of sulfur content in fuel oil, including updates and revisions to those methods. These methods match those cited in 25 Pa Code Section 123.33(f), which is part of the Pennsylvania SIP.

Pennsylvania asserts that lowering the maximum allowable sulfur content in commercial fuel oils combusted or sold in Allegheny County will aid in reducing SO₂ emissions that are a cause of regional haze. EPA proposes to approve these regulations to strengthen Pennsylvania’s SIP.

III. Proposed Action

EPA has determined that the revisions made to Article XXI of ACHD’s rules and regulations, Sections 2101.20, 2104.10 and 2107.16, meet the requirements of the CAA and is proposing to approve the amendments to ACHD’s regulations for commercial fuel oil sulfur limits for combustion units into the Pennsylvania SIP. EPA is soliciting public comments on the

issues discussed in this document. These comments will be considered before taking final action.

IV. 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 ACHD's maximum allowable sulfur content regulation. EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 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).

In addition, this SIP revision for commercial fuel oil sulfur limits for combustion units in Allegheny County, Pennsylvania, does not have tribal implications as specified in Executive Order 13175, because the SIP is not approved to apply in Indian Country located in the state, and

EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: December 27, 2018.

Cosmo Servidio,
Regional Administrator,
Region III.

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