6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2017-0558; FRL-9993-79-Region 6]

Air Plan Approval and Promulgation of State Implementation Plan, Louisiana; Attainment Demonstration for the St. Bernard Parish 2010 SO_2 Primary National Ambient Air Quality Standard Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State Implementation Plan (SIP) revision that the State of Louisiana submitted to EPA on November 9, 2017 with supplements provided on February 8, 2018, August 24, 2018 and October 9, 2018. The purpose of this revision is to provide for attainment of the 1-hour sulfur dioxide (SO_2) primary national ambient air quality standard (NAAQS) in the St. Bernard Parish, Louisiana Nonattainment Area. This plan (herein called a "nonattainment plan") includes Louisiana's attainment demonstration and other elements required under the Clean Air Act (CAA). In addition to an attainment demonstration, the nonattainment plan addresses the requirements for meeting reasonable further progress (RFP) toward attainment of the NAAQS, implementation of reasonably available control measures and reasonably available control technology (RACM/RACT), base-year and projection-year emission inventories, enforceable emissions limitations and control measures, and contingency measures. EPA concludes that Louisiana has appropriately demonstrated that the nonattainment plan provisions provide for attainment of the 2010 1-hour primary SO_2 NAAQS in the St. Bernard Parish, Louisiana Nonattainment Area by the applicable attainment date and that the nonattainment plan meets the other applicable requirements under the CAA. This action is being taken in accordance with the CAA.

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

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R06-OAR-2017-0558. All documents in the docket are listed on the 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 www.regulations.gov or at the U.S. Environmental Protection Agency, EPA Region 6 Office, Air and Radiation Division, Regional Haze and SO_2 Section, 1445 Ross Avenue, Dallas, TX. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.

FOR FURTHER INFORMATION CONTACT: Robert Imhoff, EPA Region 6 Office, Regional Haze and SO_2 Section, 1445 Ross Avenue, (Mail code ARSI), Dallas, TX 75202-2750, (214) 665-7262, Imhoff.Robert@epa.gov.

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

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I. Background and Purpose

On June 22, 2010, EPA promulgated a new 1-hour primary SO_2 NAAQS of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99^{th} percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. *See* 75 FR 35520, codified at 40 CFR 50.17(a)-(b). On August 5, 2013, EPA designated a first set of 29 areas of the country as nonattainment for the 2010 SO_2 NAAQS, including the St. Bernard Parish, Louisiana Nonattainment Area within the State of Louisiana. *See* 78 FR 47191, codified at 40 CFR part 81, subpart C. These "round one" area designations were effective October 4, 2013. Section 191(a) of the CAA directs states to submit SIPs for areas designated as nonattainment for the SO_2 NAAQS to EPA within 18 months of the effective date of the designation, i.e., by no later than April 4, 2015 in this case. These SIPs are required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation, which is October 4, 2018, in accordance with CAA sections 191-192.

Section 172(c) of the CAA lists the required components of a nonattainment plan submittal. The base year emissions inventory (section 172(c)(3)) is required to show a comprehensive, accurate, current inventory of all relevant pollutants in the nonattainment area. The nonattainment plan must identify and quantify any expected emissions from the construction of new sources to account for emissions in the area that might affect reasonable further progress (RFP) toward attainment, or that might interfere with attainment and maintenance of the NAAQS, and it must provide for a nonattainment new source review (NNSR) program (section 172(c)(5)). The attainment demonstration must include a modeling analysis showing that the enforceable emissions limitations and other control measures taken by the state will provide for RFP and expeditious attainment of the NAAQS (section 172(c)(2), (4), (6), and (7)). The nonattainment plan must include an analysis and provide for implementation of RACM, including RACT (section

172(c)(1)). Finally, the nonattainment plan must provide for contingency measures (section 172(c)(9)) to be implemented either in the case that RFP toward attainment is not made, or in the case that the area fails to attain the NAAQS by the attainment date.

On April 23, 2014, EPA issued a guidance document entitled, "Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions" (2014 guidance). This 2014 guidance provides recommendations for the development of SO_2 nonattainment SIPs to satisfy CAA requirements (*see*, e.g., sections 172, 191, and 192). An attainment demonstration must also meet the requirements of 40 CFR part 51, subparts F and G, and 40 CFR part 51, appendix W (the *Guideline on Air Quality Models*; "the *Guideline*"), and include inventory data, modeling results, and emissions reduction analyses on which the state has based its projected attainment.

For a number of areas, including the St. Bernard Parish, Louisiana SO_2 Nonattainment Area, EPA published a document on March 18, 2016, that pertinent states had failed to submit the required SO_2 nonattainment plan by the submittal deadline. *See* 81 FR 14736. This finding initiated a deadline under CAA section 179(a) for the potential imposition of new source review and highway funding sanctions, and for EPA to promulgate a Federal implementation plan (FIP) under section 110(c) of the CAA. Louisiana submitted a nonattainment plan for the St. Bernard Parish, Louisiana Nonattainment Area on November 9, 2017 and supplemented it on February 8, 2018. On February 26, 2018, EPA determined that the State's SO_2 Nonattainment Area SIP revision for St. Bernard Parish was complete under 40 CFR part 51, app. V. As a result of EPA's February 26, 2018 completeness determination, and pursuant to the Clean Air Act 179(a), sanctions that would have applied, no longer apply upon such a determination of completeness. Furthermore, upon issuance of this final approval of Louisiana's SIP submittal, EPA's FIP obligation will cease to apply.

On April 19, 2018, we published a proposed rulemaking action to approve the 2010 SO_2 Primary NAAQS Nonattainment Area SIP revision for St. Bernard Parish, submitted by the State of Louisiana on November 9, 2017 and first supplemented on February 8, 2018. See 83 FR 17349. The April 19, 2018 action proposed approval of the following CAA SIP elements: the attainment demonstration for the SO_2 NAAQS and enforceable emissions limits, which included an Agreed Order on Consent (AOC) dated February 2, 2018 for the Rain CII Carbon, LLC. (Rain) facility; the reasonable further progress (RFP) plan; the reasonably available control measures (RACM) and reasonably available control technology (RACT) demonstration; the emission inventories; and the contingency measures. We also proposed to find that the State had demonstrated that its current Nonattainment New Source Review (NNSR) program covered the 2010 SO_2 NAAQS; therefore, no revision to the SIP was required for the NNSR element. Comments on the original proposal were required to be received by May 21, 2018. We received timely comments on the proposal.

After the close of the public comment period to the April 19, 2018 proposal, the Louisiana Department of Environmental Quality (LDEQ) submitted additional information to EPA on August 24, 2018. The additional information was submitted to us partly in response to a public comment received on the April 19, 2018 proposal from United States Senator from Louisiana, Bill Cassidy. Senator Cassidy's comment letter expressed concern that Rain would need to modify the February 2018 AOC entered between Rain and LDEQ as Rain did not believe that it could meet the limits set forth in the AOC without an additional extension to the compliance dates. In response to the comment, and to determine feasible emission limits for operations during transitions from exhaust flow through the hot stack to flow through the heat recovery boiler (referred to as the cold stack), LDEQ granted an extension of the deadline of the February 2018 AOC on April 27, 2018. LDEQ then issued a revised AOC on August 2, 2018. An air quality modeling analysis was submitted to EPA on August 24, 2018 to specifically demonstrate attainment of the NAAQS with the revised

limits in the August 2018 AOC. EPA reviewed the new modeling analysis and found some errors and omissions. In response, LDEQ submitted an updated modeling analysis on October 9, 2018. The AOC (signed by LDEQ and Rain August 2, 2018 and submitted to EPA on August 24, 2018), and the October 9, 2018 modeling files (also submitted by LDEQ) serve as a supplement to the November 9, 2017 and February 8, 2018 SIP submittals and are intended to address the public comment by incorporating certain additional AOC revisions (dated August 2, 2018) and supporting modeling into the 2010 SO_2 Primary NAAQS Nonattainment Area SIP revision for St. Bernard Parish. All correspondence related to the supplemental August 24, 2018 and updated October 9, 2018 modeling analyses and the revised August 2, 2018 AOC are included in the public docket to this action.[1]

In a supplemental notice of proposed rulemaking on February 8, 2019 (84 FR 2801), EPA proposed to approve Louisiana's August 24, 2018 and October 9, 2018 updated modeling files as a supplement to the November 9, 2017 SIP and February 8, 2018 submittals. The State's submittal and attainment demonstration included all the specific attainment elements mentioned above, including new SO_2 emission limits and associated control technology efficiency requirements for the calcining plant, currently owned and operated by Rain CII Carbon. Rain's new SO_2 emission limits were developed in accordance with EPA's 2014 guidance as referenced above. Comments on EPA's supplemental proposed rulemaking were due on or before March 11, 2019. EPA received timely comments on the supplemental proposed approval for Louisiana's nonattainment area plan for the St. Bernard Parish, Louisiana Nonattainment Area. The comment letters received in response to the supplemental February 8, 2019 proposal and our earlier April 19, 2018 proposal are available in the docket for this final rulemaking action. EPA's summary of the more significant comments and EPA's responses are provided below. We respond to all comments received on both

[1] For the related correspondence, please see the public docket at EPA-R06-OAR-2017-0558-0034.

the original and supplemental proposals in a separate response to comment document available in the public docket for this action. For a comprehensive discussion of Louisiana's SIP submittal and EPA's analysis and rationale for approval of the State's submittal and attainment demonstration for this area, please refer to EPA's April 19, 2018 proposed approval and February 8, 2019 supplemental notice of proposed rulemaking.

II. Summary of Major Issues Raised by Commenters and Our Responses:

We received five written comment letters in response to our original and supplemental proposals for approval of the SIP revisions for the St. Bernard Parish, Louisiana Nonattainment Area relevant to both actions.[2] We received comments from Sierra Club on both the April 19, 2018 proposal and the February 8, 2019 supplemental proposal; one comment letter from Congressman Cassidy on the April 19, 2018 proposal, and comment letters from the Louisiana Chemical Association (LCA) on both the April 19, 2018 proposal and the February 8, 2019 supplemental proposal. To review the complete set and text of the comments received, please refer to the publicly posted docket for this rulemaking as identified above. A document titled "Response to Significant Comments on the Attainment Demonstration for the 2010 Sulfur Dioxide National Ambient Air Quality Standards (NAAQS) in St. Bernard Parish, Louisiana," also is included in the docket to this action and contains a complete list of comments and our detailed responses to all comments. Below, we provide a summary of some of the more significant comments received and a summary of EPA's responses.

Comments in Support:

[2] We also received five anonymous public comments on the April 19, 2018 proposed rulemaking action that were not relevant to the proposal. Please see the separate Responses to Significant Comments document for more detailed information.

Comment: EPA received supportive comments from LCA on the April 19, 2018 initial proposed approval and on the February 8, 2019 supplemental proposal. The commenter expressed support for LDEQ's approach to the SIP and EPA's proposed approval.

EPA Response:

EPA acknowledges the commenter's support.

Attainment Demonstration Comments:

Comment: We received comments from Sierra Club stating that the 2016 monitored design value (DV) is just below the standard and that the attainment demonstration does not provide adequate assurance that air quality impacts will remain below the NAAQS.

EPA's Response:

We disagree that the attainment demonstration does not provide adequate assurance that air quality impacts will remain below the NAAQS. The SO_2 demonstration SIP and the modeling, which is part of the SIP, indicate that the SO_2 health-based standard will be attained in and around St. Bernard Parish, thus protecting the health of the inhabitants.

The SO_2 emissions in St. Bernard Parish have continued to decline, the total emission rate with updated permits declining 21% from 2017 to 2018 – from 9117 tpy to 7170 tpy. This decline in emissions along with the emission limits specified in the revised Rain AOC will maintain the reduced measured SO_2 concentrations at the monitors in St. Bernard Parish. Through the 4th quarter of 2018 (the most recent data available at this time), the SO_2 concentration data submitted to the AQS shows the 1^{st} and 4^{th} highest SO_2 2018 concentrations at the Vista monitor were 66.9 and 40.3 ppb respectively. The design value for 2018 certified by the State and subject to EPA

review and concurrence is 59 ppb (154.6 µg/m^3), a significant decline from the 2016 design value of 73 ppb (191.2 µg/m^3)

Modeling Comments:

Comment: One commenter (Sierra Club) asserted that in reviewing a state plan, EPA can approve, disapprove, partially approve, partially disapprove and issue its own plan. EPA may not fill the gaps in a facially deficient SIP without first concluding that the plan is deficient in some respect. Here, EPA has performed its own modeling as part of the proposed SIP approval, and in doing so, has blurred the lines between appropriate review and action on the State submittal, and its obligation to take Federal action in the absence of a complete and lawful SIP.

In addition, the commenter argues that neither the State's nor EPA's modeling provide adequate assurance that air quality impacts in St. Bernard Parish will remain below the NAAQS. EPA's modeling and the State's modeling appear to be fundamentally inconsistent as in Table 2 of the proposed rule the agency indicates that the maximum SO_2 impacts in St. Bernard Parish will be 190.8 µg/m3 while the State's own submittal concludes that the maximum impacts are 191.4 µg/m3.

EPA Response:

Nothing in the Clean Air Act forecloses EPA from conducting an analysis to assist in its review and evaluation of the State's SIP submittal. EPA's modeling was an integral part of our review and evaluation of the State's SIP submittal to verify that the NAAQS was fully protected at all relevant locations when accounting for all measures in the SIP. In this case, EPA's modeling confirmed the State's analysis; our modeling was provided to show our process and to assess our reasons for approving the SIP submittal. We also consider the comment moot based on the State's August 24,

2018 and October 9, 2018 supplements to the SIP in which the State conducted its own additional modeling analysis to support the August 2, 2018 revised AOC.

EPA contacted LDEQ to confirm why the maximum SO_2 concentration in LDEQ Secretary Brown's letter[3] was slightly different (by 0.6 $\mu g/m^3$) from the value in the State's modeling files. LDEQ indicated that Secretary Brown's letter was based on preliminary modeling conducted in July 2018 to determine limits for the proposed AOC revision.[4] After that modeling was conducted, additional updates were made to emissions for other St. Bernard Parish sources to make sure that the modeling inventory was accurate, and LDEQ remodeled and provided the October 9, 2018 supplement. The modeled impacts are below the level of the 1-hour primary SO_2 NAAQS (196 $\mu g/m^3$) and demonstrate attainment of the 1-hour SO_2 primary NAAQS.[5]

Comment: One commenter (Sierra Club) took issue with the State's exclusion from modeling of several major SO_2 sources to the west because they did not cause modeled gradients >3.5 $\mu g/m^3$ at any receptors in St. Bernard Parish and to characterize their contribution through the background concentrations. The commenter states that the use of 3.5 $\mu g/m^3$ as a threshold is arbitrary to define significant contribution to the nonattainment area.

EPA Response:

EPA used several factors in evaluating and concurring with the State's decision to exclude the sources to the west from the modeling. In the State's judgment, the distance to these western sources (>25km to the Parish boundary), and the low maximum concentrations and the small

[3] See August 24, 2018 Letter from Chuck Carr Brown, Louisiana Department of Environmental Quality to Anne Idsal, (former) Regional Administrator submitting Supplemental Information and the August 2, 2018 Executed Administrative Order on Consent available in the docket for this action. See docket ID No. EPA-R06-OAR-2017-0558-0032

[4] See Email from Vennetta Hayes to Robert Imhoff on March 18, 2019 included in docket to this action email_Hayes_to_Imhoff_03182019.pdf.

[5] For all related correspondence, please see the public docket at EPA-R06-OAR-2017-0558-0034.

impact gradients modeled for these sources in the western edge of St. Bernard Parish support the determination that their impacts not be included in the modeling or characterized in the modeling through the use of the background monitor value added to the modeling concentration.

EPA's guidance[6] is that distant sources (beyond a 10-20 km range from St. Bernard) need not be included in the modeling unless they are very large (on the order of 5,000 to 10,000 tpy or more for ranges beyond 20 km). In our 1-hour NO_2 and SO_2 modeling guidance, we specifically indicate that in many situations sources beyond 10 km would not need to be included.

For St. Bernard there were limited options for the background monitor data because the existing monitors are directly impacted by nearby sources under certain wind directions. The option chosen was to use a monitor, Meraux, located in St. Bernard Parish, to best characterize background concentrations because of its proximity. Since the Meraux monitor was impacted by Valero refinery emissions which were directly included in the model, LDEQ excluded the data when winds were from directions that could transport Valero's emissions to this monitor. Valero is located to the west of the Meraux monitor. EPA acknowledges that the exclusion of wind directions from the Valero refinery to the Meraux background monitor also means that the background does not include all potential contributions from the remote (>20km) sources to the west. As discussed above, none of these sources would normally be included in the modeling directly due to their size and distance. However, because of the exclusion of certain wind directions coupled with relatively few point sources in the included wind directions that made up the Meraux monitor's background data, out of an abundance of caution, EPA requested that the State model the remote western sources to ensure that their exclusion was reasonable and would not impact the attainment demonstration if they were included.

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[6] June 29, 2010 memo from Steve Page, Guidance Concerning the Implementation of the 1-hour NO2 NAAQS for the Prevention of Significant Deterioration Program

EPA's concern was whether the attainment demonstration modeling would show a projected value to the east of Rain very near the standard during Rain's normal operations. In that case, if the excluded sources to the west had the potential for an appreciable impact there would be a concern that the modeled DV could exceed the standard if the impact from those sources were included. In order to make sure that there was no appreciable potential impact from these sources to the west, LDEQ agreed to look at sources individually and also ensure that they were not omitting a cluster of sources that could have potential impacts much higher than 3.5 $\mu g/m^3$. LDEQ chose the value of 3.5 $\mu g/m^3$, which is less than 50% of the 3 ppb (7.86 $\mu g/m^3$) Significant Impact Level that LDEQ has used in their permitting program for the 1-Hour SO_2 NAAQS. LDEQ's analysis was conservative as it assessed the potential of the sources to add 3.5 µg/m3 to a receptor anywhere in St. Bernard Parish. For these sources to the west to play a role in the attainment demonstration, their impact would have to occur at a time and at a receptor that was very near the standard in St. Bernard Parish. The use of the <3.5 $\mu g/m^3$ was not as a significance threshold but as a conservative factor assessing the potential impacts anywhere in St. Bernard Parish from these sources. As long as the modeled maximum design value to the east of Rain in the absence of these sources to the west was more than 3.5 µg/m3 below the NAAQS, then even if all the western sources were included in the modeling they could not have caused a violation of the NAAQS.

The result of the modeling for the attainment demonstration was that the highest design values were projected to the west of Rain during periods with winds out of the east. The excluded western sources cannot add to this design value as they are downwind of the area of highest modeled concentration during this period. The highest values to the east of Rain under any scenario were projected to be more than 10 $\mu g/m^3$ below the standard. Given that there were only two potential remote sources that were over 1,000 tpy to the west and they both had modeled impacts below 3.5 $\mu g/m^3$ and were not above the clustering threshold, we know that the sources could not endanger

the attainment demonstration if they were included in the modeling. EPA noted that the low concentrations modeled for these sources comports with the guidance from appendix W 8.3.3 (b) i-iii. Further, these maximum modeled impacts occurred at the extreme western boundary of St. Bernard Parish and declined to the east where the maximum design value was located.

The table below gives the distance from the excluded sources from the west to the modeled maximum design value to the east of Rain that occurs during one stage of Rain's operation and their 2014 NEI emissions. Based on the 2014 NEI emissions and distance to the maximum modeled design value east of Rain it was appropriate to not include these sources to the west in the model. LDEQ's analysis to consider these sources to the west for inclusion in the modeling was conservative and provided additional support to the conclusion that inclusion of these sources would not impact the attainment demonstration.

Excluded Source	Distance to Modeled Max East of Rain (km)	2014 Emissions (tpy)
Cornerstone Chemical - Fortier	29	1154
Valero Refining – St. Charles	41	212
Rain CII Carbon - Norco	42	2710
Motiva Refinery - Norco	42.5	226
Shell Chemical - Norco	42.8	177
Union Carbide – St Charles	46.5	413

Comment: One commenter (Sierra Club) noted that as part of its attainment demonstration, the State modeled a transition from hot to cold stack operations from January 8 through January 9, 2017. The analysis found the highest modeled design value was for the cold stack alone with an emission rate of 510 lb/hr. The modeled DV of 192.4 µ/m3 is within 2% of the standard. Yet the actual emissions for the cold stack shown in Figure 1 indicate that there are several hours with emissions above this limit of 510 lb/hr. The commenter states that neither LDEQ nor EPA explain how the 510 lb/hr limit will be enforced, which further gives rise to the representativeness of such a

small sample size that was chosen to exemplify the transition. There is no comparison to other transition periods and no justification of why the single 33-hour period modeled from January 2017 is representative of a worst case and an assurance that 510 lb/hr is not exceeded more frequently. The fact that even this one period chosen for the analysis has hourly emissions exceeding the limit suggests that a historical examination of all transition periods and their associated hot and cold stack emissions is warranted.

EPA Response:

The purpose of the use of the transition was to use the stack parameters (e.g. stack temperature and flow velocity) for an actual transition to give realistic parameters (that is those that the plant can reliably maintain) to model the allowable emission rates throughout the transition period. As stated in the TSD, reduced SO_2 emission rates were derived from modeling and Rain must achieve them to attain the standard. The few hours with rates above the new emission rate limit are not pertinent to compliance since the 510 lb/hr limit was not in place at the time in January 2017. The August 2, 2018 AOC specifies both the stack parameters and the emission rate to be maintained during normal operation through the cold stack and at the different stages of transition and the model indicates that the standard will be met under all these conditions. While the use of data from an actual transition gives confidence that the plant can successfully meet the conditions of the AOC, examination of past additional transitions would not add value.

Compliance with the 510 lb/hr limit on the cold stack is achieved through the automated control and monitored by the installed CEM system which measures both concentration and mass flow rate. The emission rate required is programmed into the system and it governs the operational parameters of the scrubber to achieve the desired rate. The emission rate attained is recorded directly and reported for compliance.

Comment: One commenter (Sierra Club) questioned the choice to use rural dispersion coefficients in an area they believe to be urban. The commenter asserts that modeling should have been run with both rural and urban coefficients.

EPA Response:

LDEQ stated that rural coefficients were appropriate since the surrounding rivers, lakes, and wetlands would tend to minimize the urban heat island effect. In particular, the wind direction for the highest design values is from the east which contains an extensive wetland. See our full Response to Significant Comments document for a detailed analysis of the land use around the facility and in the region. EPA agrees with LDEQ that this choice was appropriate for this analysis and running the model with urban coefficients was not appropriate or necessary.

Comment: One commenter (Sierra Club), argues that Louisiana's SIP revision, the AOC, or EPA's approval does not provide understandable conditions and emission limits for the Rain CII Carbon, LLC facility. The commenter argues that the AOC contains numerous overlapping, and in some cases, inconsistent standards that govern the same pollutant. Moreover, the AOC includes many alternatives for compliance, none of which involve actually measuring or monitoring the pollution emitted by the facility. Because the SIP fails to include any meaningful way for LDEQ or EPA to monitor compliance, the emission limits and compliance obligations must be revised so that the conditions are clear, specific, and unambiguous.

EPA Response:

We disagree with the comment. As to the first part of the comment over inconsistent standards for the same pollutant, the AOC provides clear requirements at all stages of operation of the plant to ensure attainment of the NAAQS. At every operational stage, the operational conditions (temperature, flow and emission rate) needed are unequivocal and distinct. As illustrated in Figure 5 from the supplemental TSD and repeated in the detailed Response to Comment document included in the docket to this action, the requirements do not overlap as stated by the commenter – each block is distinct (they do not overlap) and the required conditions are specific.

As to the comment regarding alternatives for compliance, as stated above and illustrated in Figure 5 from the supplemental TSD, the requirements for compliance are specific and distinct for each operational phase. The cold stack requirements are directly measured and reported. Compliance with the hot stack requirements is monitored by measurements of temperature and flow rates and a verified emission rate equation. The equation is based on a mass balance of the sulfur contained in the input green coke and output calcined coke determined through composite samples taken throughout the operational day. It should be noted that the hours of operation of the hot stack either by stand-alone operation or during transitions are limited. The stand-alone hours of operation are limited by the permit to less than 500 hours per year. According to Rain's 2017 Title V Specific Requirements Report[7] the plant operated the hot stack-alone 435 hours (5% of the time) and transition operations 394 hours (4.5% of the time).

Procedural and Other Comments:

Comment: One commenter (Sierra Club) stated that EPA's original proposal and supplemental notice of proposed rulemaking fail to meet the Clean Air Act's statutory deadline for issuing a FIP, and the agency must impose sanctions for failing to submit a lawful SIP. Under Section 192, these SIPs are required to demonstrate that their respective areas will attain the NAAQS no later than 5

[7] Title_V_Specific_Requirements_Report_2017.pdf included in the docket for this action

years from the date of the nonattainment designation—here, no later than August 5, 2018. However, Louisiana failed to timely submit a nonattainment SIP for St. Bernard Parish; on March 18, 2016, EPA published a final rule for failure to submit a nonattainment SIP. This started an 18-month sanction clock ending on September 18, 2017. EPA's February 26, 2018 determination of completeness letter to LDEQ is not a substitute for a finding of the Administrator that the State has come into compliance, and therefore the agency must impose sanctions. Lastly, the State's supplemental modeling was not submitted until October 9, 2018 – two months after the deadline.

EPA Response:

We disagree with the Commenter. With regard to the Commenter's statements on sanctions, we find the comments are outside the scope of the proposal and supplemental proposal actions and not germane to our original or supplemental proposed action to approve the SIP, since the determination of completeness and correction of deficiency that stopped the above-referenced sanctions clock occurred before we proposed this SIP approval, and therefore we are not required to respond to the comment. Further, under EPA's rules implementing mandatory sanctions, it is clear that sanctions clocks started by a finding of failure to submit per 40 CFR 52.31(c)(1) are terminated by the finding that the state has corrected the deficiency via a letter from the Administrator to the Governor, under 40 CFR 52.31(d)(5). Moreover, under Delegation 7-67, the authority to make this finding is delegated to Regional Administrators, who may re-delegate this authority to Division Directors. [8] In this case, the completeness finding under 40 CFR part 51, app. V, was made by the delegated Division Director and communicated to the State by a letter signed by EPA on February 26, 2018.[9] Under the CAA, once such finding is made and a SIP submittal is deemed complete, the

[8] See docket for a copy of the 7-67 Delegation.
[9] See docket for a copy of this letter.

imposition of New Source Review and highway funding sanctions ceases to apply. With regard to the October modeling files, as stated previously, these served as an update to the November 9, 2017 and February 8, 2018 SIP submittals and were intended to address a specific public comment by incorporating certain additional AOC revisions (dated August 2, 2018) and supporting modeling into the 2010 SO_2 Primary NAAQS Nonattainment Area SIP revision for St. Bernard Parish. Specifically, the October modeling files were submitted by LDEQ to correct some errors and omissions in the August 24, 2018 modeling. The October 2018 modeling analysis, including the revised August 2, 2018 AOC emission limits for the Rain facility (emission limits effective August 2, 2018), resulted in concentrations below the level of the 1-hour primary SO_2 NAAQS and demonstrate attainment of the 1-hour SO 2 primary NAAQS before the attainment deadline of October 4, 2018.

We note that the commenter is incorrect with regards to the attainment date. As detailed in the background section above, the "round one" area designations were effective October 4, 2013. SIPs are required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation, which is October 4, 2018. With regard to a FIP obligation mentioned by the commenter, as we noted above, any duties EPA has to promulgate a FIP are outside the scope of this SIP approval action, and therefore we are not required to respond to the comment, however, such alleged duties will terminate upon issuance of this final rulemaking approval action, thus EPA's FIP obligation will cease to apply.

Comment: One commenter stated that EPA's finding of failure to submit triggered a requirement that the EPA promulgate a FIP within two years of the finding—i.e., by and March 18, 2018—unless, by that time (a) the state has made the necessary complete submittal and (b) EPA has

approved the submittal as meeting applicable requirements. Since Louisiana missed the deadline for a complete submittal EPA must impose a nonattainment FIP for St. Bernard Parish.

EPA Response:

With regard to the Commenter's statements on the FIP, we find that any duties EPA has to promulgate a FIP are outside the scope of this SIP approval action, and therefore we are not required to respond to the comment. However, we note that in any case such alleged duties will terminate upon EPA's final approval of the SIP.

III. Final Action

EPA has determined that Louisiana's SO_2 nonattainment plan meets the applicable requirements of sections 110, 172, 191, and 192 of the CAA. EPA is approving Louisiana's November 9, 2017 SIP submission, as supplemented by the State on February 8, 2018, August 24, 2018 and October 9, 2018, for attaining the 2010 primary 1-hour SO_2 NAAQS for the St. Bernard Parish, Louisiana Nonattainment Area and for meeting other nonattainment area planning requirements. This SO_2 nonattainment plan includes Louisiana's attainment demonstration for the SO_2 nonattainment area. The nonattainment area plan also addresses requirements for RFP, RACT/RACM, enforceable emission limits and control measures, base-year and projection-year emission inventories, and contingency measures. Louisiana has also demonstrated it met the requirements regarding NNSR for SO_2 and this NNSR program already is part of the SIP.

EPA is approving into the Louisiana SIP the provisions of Rain Carbon CII's Administrative Order, issued August 2, 2018, that constitute the SO_2 operating and emission limits and their associated monitoring, testing, recordkeeping, and reporting requirements. EPA is approving these provisions as a source-specific SIP revision.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of revisions to the Louisiana source-specific requirements as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through www.regulations.gov and in hard copy at the EPA Region 6 office (please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[10]

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

[10] See 62 FR 27968 (May 22, 1997).

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**Insert date 60 days after date of publication in the Federal Register**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 21, 2019.

David Gray,
Acting Regional Administrator, Region 6.

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 T—Louisiana

2. Section 52.970 is amended by:

a. In the table in paragraph (d), adding an entry for "Rain CII Carbon in St. Bernard Parish" at the end of the table; and

b. In the second table in paragraph (e) titled "EPA Approved Louisiana NonRegulatory Provisions and Quasi-Regulatory Measures", adding the entry "St. Bernard Parish, Louisiana Nonattainment Area Plan for the 2010 Primary 1-Hour Sulfur Dioxide NAAQS" at the end of the table.

The additions read as follows:

§52.970 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED LOUISIANA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit or order number	State approval/effective date	EPA approval date	Comments
* * * * * * *				
Rain CII Carbon in St. Bernard Parish	In the Matter of Rain CII Carbon LLC, St. Bernard Parish	8/2/2018	**[Insert date of publication date in the Federal Register]** **[Insert <u>Federal Register</u> citation]**	Amended Administrative order on Consent dated 8/2/18. Pyroscrubber (EQT 004) and Waste Heat Boiler/Baghouse (EQT 0003)

(e) * * *

EPA APPROVED LOUISIANA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanation
* * * * * * *				
St. Bernard Parish, Louisiana Nonattainment Area Plan for the 2010 Primary 1-Hour Sulfur Dioxide NAAQS	St. Bernard Parish, Louisiana SO_2 Nonattainment Area	11/9/2017, 2/8/2018, 8/24/2018, 10/9/2018	**[Insert date of publication date in the Federal Register]** **[Insert Federal Register citation]**	Revised AOC dated 8/2/2018 submitted 8/24/2018. Revised modeling submitted 10/9/2018.

[FR Doc. 2019-10918 Filed: 5/28/2019 8:45 am; Publication Date: 5/29/2019]