

Corporation, Music Choice, David Powell, David Rahn, Rockbot, Inc., Sirius XM Radio Inc., and SoundExchange, Inc. The Judges initiated the three-month negotiation period and directed the participants to submit written direct statements no later than May 14, 2018. See 17 U.S.C. 803(b)(3).

On May 4, 2018, the Judges received a Motion to Adopt Settlement stating that all participants<sup>1</sup> had reached a settlement obviating the need for written direct statements or a hearing.

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt royalty rates and terms negotiated by “some or all of the participants in a proceeding at any time during the proceeding” provided they are submitted to the Judges for approval. The Judges must provide “an opportunity to comment on the agreement” to both participants and non-participants in the rate proceeding who “would be bound by the terms, rates, or other determination set by any agreement . . .” 17 U.S.C. 801(b)(7)(A)(i). Participants in the proceeding may also “object to [the agreement’s] adoption as a basis for statutory terms and rates.” *Id.*

The Judges “may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement,” only “if any participant [to the proceeding] objects to the agreement and the [Judges] conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.” 17 U.S.C. 801(b)(7)(A)(ii).

Royalty rates and terms adopted pursuant to section 801(b)(7)(A) are binding on all copyright owners of sound recordings and all business establishment services making an ephemeral recording of a sound recording for the period January 1, 2019, through December 31, 2023.

The public may comment and object to any or all of the proposed regulations contained in this notice. Comments and objections must be submitted no later than June 18, 2018.

<sup>1</sup> Despite filing a Petition to Participate, David Powell did not participate in the negotiations and did not join in the agreed settlement. The Judges make no finding with regard to Mr. Powell’s eligibility to participate in this proceeding. Mr. Powell may, of course, respond to this notice. To the extent Mr. Powell has an interest in the business establishment services license, he will be bound by the royalty rates and terms the Judges adopt ultimately.

**List of Subjects in 37 CFR Part 384**

Copyright, Digital audio transmissions, Ephemeral recordings, Performance right, Sound recordings.

**Proposed Regulations**

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend part 384 of chapter III of title 37 of the Code of Federal Regulations as follows:

**PART 384—RATES AND TERMS FOR THE MAKING OF EPHEMERAL RECORDINGS BY BUSINESS ESTABLISHMENT SERVICES**

- 1. The authority citation for part 384 continues to read as follows:

**Authority:** 17 U.S.C. 112(e), 801(b)(1).

**§ 384.1 [Amended]**

- 2. In § 384.1 amend paragraph (a) by removing “January 1, 2014, through December 31, 2018” and adding “January 1, 2019, through December 31, 2023” in its place.
- 3. Amend § 384.3 by revising paragraph (a) to read as follows and in paragraph (b), removing “\$10,000” and adding “\$20,000.”

**§ 384.3 Royalty fees for ephemeral recordings.**

(a) *Basic royalty rate.* (1) For the making of any number of Ephemeral Recordings in the operation of a Business Establishment Service, a Licensee shall pay a royalty equal to the following percentages of such Licensee’s “Gross Proceeds” derived from the use in such service of musical programs that are attributable to copyrighted recordings:

Year	Rate (%)
2019 .....	12.5
2020 .....	12.75
2021 .....	13.0
2022 .....	13.25
2023 .....	13.5

(2) “Gross Proceeds” as used in this section means all fees and payments, including those made in kind, received from any source before, during or after the License Period that are derived from the use of copyrighted sound recordings during the License Period pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on exclusive rights specified in 17 U.S.C. 114(d)(1)(C)(iv). The attribution of Gross Proceeds to copyrighted recordings may be made on the basis of:

(i) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program; and

(ii) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

\* \* \* \* \*

**§ 384.5 [Amended]**

- 4. In § 384.5 amend paragraph (d)(4) by removing the second comma before the word “subject”.

Dated: May 11, 2018.

**Suzanne M. Barnett,**

*Chief Copyright Royalty Judge.*

[FR Doc. 2018–10509 Filed 5–16–18; 8:45 am]

**BILLING CODE 1410–72–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R09–OAR–2018–0272; FRL–9978–17–Region 9]

**Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District; Reasonably Available Control Technology Demonstration**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or “District”) portion of the California State Implementation Plan (SIP), which applies to the San Joaquin Valley of California (“Valley”). These revisions concern the District’s demonstration regarding Reasonably Available Control Technology (RACT) requirements for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). We are also proposing to approve a public draft version of SJVUAPCD’s supplement to its 2014 RACT SIP demonstration, which contains relevant permit conditions for J.R. Simplot’s Nitric Acid plant in Helm, California (CA) and negative declarations where the District concludes it has no sources subject to certain Control Techniques Guidelines (CTG) documents. We are proposing action on local SIP revisions under the Clean Air Act (CAA or “the Act”). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by June 18, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0272 at <https://www.regulations.gov/>, or via email to Stanley Tong, at [tong.stanley@epa.gov](mailto:tong.stanley@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov/), follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from [Regulations.gov](https://www.regulations.gov/). For either manner of submission, the 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. The 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://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Stanley Tong, EPA Region IX, (415) 947–4122, [tong.stanley@epa.gov](mailto:tong.stanley@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

## Table of Contents

- I. The State’s Submittal
  - A. What documents did the State submit?
  - B. Are there other versions of these documents?
  - C. What is the purpose of the submitted documents?
- II. The EPA’s Evaluation and Proposed Action
  - A. How is the EPA evaluating the submitted documents?
  - B. Do the submitted documents meet the evaluation criteria?
  - C. Public comment and proposed action
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

### I. The State’s Submittal

#### A. What documents did the State submit?

On June 19, 2014, the SJVUAPCD adopted the “2014 Reasonably Available Control Technology (RACT) Demonstration for the 8-Hour Ozone State Implementation Plan (SIP)” (“2014 RACT SIP”), and on July 18, 2014, the

California Air Resources Board (CARB) submitted it to the EPA for approval as a revision to the California SIP. On January 18, 2015, the submittal of the 2014 RACT SIP was deemed complete by operation of law.

On May 4, 2018, CARB transmitted the District’s public draft version of relevant permit conditions in a permit to operate for J.R. Simplot’s Nitric Acid plant in Helm, CA and negative declarations for several CTG source categories, along with a request for parallel processing.<sup>1</sup> The District plans to adopt negative declarations for CTGs covering magnetic wire; synthesized pharmaceutical products; pneumatic rubber tires; leaks from synthetic organic chemical polymer manufacturing industry (SOCMI) equipment; high-density polyethylene, polypropylene and polyester resins; air oxidation processes in SOCMI; reactor processes and distillation operations in SOCMI; and surface coating operations at shipbuilding and ship repair facilities.<sup>2</sup> As noted in footnote 1 of this document, under our parallel processing procedure, the EPA proposes action on a public draft version of a SIP revision but will take final action only after the final version is adopted and submitted to the EPA for approval. In this instance, we are proposing action based on the public draft version of the “Supplement to the 2014 Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) for the 2008 8-hour Ozone Standard” (“*Supplement to the 2014 RACT SIP*”) submitted by CARB on May 4, 2018, and will not take final action until the final version of the *Supplement to the 2014 RACT SIP* is adopted and submitted to the EPA. CARB’s May 4, 2018 letter indicates that the District Board is scheduled to consider approval of the *Supplement to the 2014 RACT SIP* on June 21, 2018, and if it is approved, CARB will submit the final package to the EPA.

<sup>1</sup> Under the EPA’s “parallel processing” procedure, the EPA proposes rulemaking action concurrently with the state’s proposed rulemaking. If the state’s proposed rule is changed, the EPA will evaluate that subsequent change and may publish another notice of proposed rulemaking. If no significant change is made, the EPA will publish a final rulemaking on the rule after responding to any submitted comments. Final rulemaking action by the EPA will occur only after the rule has been fully adopted by California and submitted formally to the EPA for incorporation into the SIP. See 40 CFR part 51, appendix V. See also [https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2\\_old/19921028\\_calcagni\\_sip\\_redesignation\\_requirements\(alt\).pdf](https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2_old/19921028_calcagni_sip_redesignation_requirements(alt).pdf).

<sup>2</sup> The SJVUAPCD’s Governing Board is scheduled to consider adopting the *Supplement to the 2014 RACT SIP*, including relevant permit conditions in a permit to operate for J.R. Simplot’s Nitric Acid plant in Helm, CA and several negative declarations, on June 21, 2018.

Also included with the District’s 2014 RACT SIP submittal package was a copy of its RACT demonstration for the 1997 8-hour ozone standard “2009 RACT SIP.”

On June 16, 2016, the SJVUAPCD adopted the “2016 Ozone Plan for the 2008 8-Hour Ozone Standard” (“2016 Ozone Plan”), and on August 24, 2016, CARB submitted it to the EPA for approval as a revision to the California SIP. Chapter 3.4 of the 2016 Ozone Plan states that “the District updated the RACT evaluation and included VOC sources in the evaluation in Appendix C.” Appendix C of the 2016 Ozone Plan, which is titled, “Stationary and Area Source Control Strategy Evaluations,” includes evaluations of individual rules for RACT. On February 24, 2017, the submittal of the 2016 Ozone Plan was deemed complete by operation of law.<sup>3</sup>

#### B. Are there other versions of these documents?

There are no previous versions of the documents described above in the SJVUAPCD portion of the California SIP for the 2008 8-hour ozone NAAQS.

#### C. What is the purpose of the submitted documents?

Volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>) together produce ground-level ozone, smog, and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC and NO<sub>x</sub> emissions. Sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as Moderate or above implement RACT for any source covered by a CTG document and for any major source of VOCs or NO<sub>x</sub>. The SJVUAPCD is subject to this requirement because it regulates an ozone nonattainment area classified as an Extreme ozone nonattainment area for the 2008 8-hour ozone NAAQS.<sup>4</sup> Therefore, the SJVUAPCD must, at a minimum, adopt RACT-level controls for all sources covered by a CTG document and for all major non-CTG sources of VOCs or NO<sub>x</sub> within the nonattainment area that it regulates. Any stationary source that emits or has the potential to emit at least 10 tons per year (tpy) of VOCs or NO<sub>x</sub> is a major stationary source in an Extreme ozone

<sup>3</sup> We are only proposing action on Chapter 3.4 and Appendix C of the 2016 Ozone Plan in order to demonstrate VOC RACT for all applicable sources for the 2008 NAAQS. We will take action on the remainder of the 2016 Ozone Plan in a separate action.

<sup>4</sup> 40 CFR 81.305; 77 FR 30088 (May 21, 2012).

nonattainment area (CAA section 182(e), (f), and 302(j)).

Section III.D of the preamble to the EPA's final rule to implement the 2008 8-hour ozone NAAQS (80 FR 12264, March 6, 2015) discusses RACT requirements. It states in part that RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations that no sources in the nonattainment area are covered by a specific CTG source category, and that states must submit appropriate supporting information for their RACT submissions as described in the EPA's implementation rule for the 1997 ozone NAAQS. See 80 FR 12264, at 12278 (March 5, 2015) and 70 FR 71612, at 71652 (November 29, 2005).

SJVUAPCD's 2014 RACT SIP contains the District's demonstration that its NO<sub>x</sub> rules implement RACT and contains a review of major stationary sources of NO<sub>x</sub> that emit or have the potential to emit at least 10 tpy of NO<sub>x</sub>.<sup>5</sup> The 2016 Ozone Plan contains the District's review of its NO<sub>x</sub> and VOC rules for RACT and states: "The District adopted its 2014 RACT SIP on June 19, 2014 to satisfy requirements for the 2008 8-hour ozone standard pursuant to the [EPA's] proposed 2015 Implementation Rule guidance document. The 2014 RACT SIP analysis demonstrates that the District meets or exceeds RACT for all applicable NO<sub>x</sub> source categories. In addition, in developing this attainment plan, the District updated the RACT evaluation and included VOC sources in the evaluation in Appendix C (Stationary and Area Source Control Strategy Evaluations)."<sup>6</sup> The Supplement to the 2014 RACT SIP contains relevant permit conditions to implement RACT for a major NO<sub>x</sub> source, J.R. Simplot's Nitric Acid plant in Helm, CA. The Supplement to the 2014 RACT SIP also contains negative declarations for several CTG source categories for which the District states it does not have stationary sources or emitting facilities in the Valley related to the CTGs.

The submitted documents and supplemental clarifying information provide SJVUAPCD's analyses of its compliance with the CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS. The EPA's technical support document (TSD) has more information about the District's submissions and the EPA's evaluations thereof.

## II. The EPA's Evaluation and Proposed Action

### A. How is the EPA evaluating the submitted documents?

SIP rules must require RACT for each category of sources covered by a CTG document as well as each major source of VOCs or NO<sub>x</sub> in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). The SJVUAPCD regulates an Extreme ozone nonattainment area (see 40 CFR 81.305) so the District's rules must implement RACT.

States should also submit for SIP approval negative declarations for those source categories for which they have not adopted CTG-based regulations (because they have no sources above the CTG recommended applicability threshold) regardless of whether such negative declarations were made for an earlier SIP.<sup>7</sup> To do so, the submittal should provide reasonable assurance that no sources subject to the CTG requirements currently exist in the SJVUAPCD.

The District's analysis must demonstrate that each major source of NO<sub>x</sub> or VOCs in the nonattainment area is covered by a RACT-level rule. In addition, for each CTG source category, the District must either demonstrate that a RACT-level rule is in place, or submit a negative declaration. Guidance and policy documents that we use to evaluate CAA section 182 RACT requirements include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub> Supplement), 57 FR 55620, November 25, 1992.
5. Memorandum from William T. Harnett to Regional Air Division Directors, (May 18, 2006), "RACT Qs & As—Reasonably Available Control Technology (RACT) Questions and Answers."

<sup>7</sup> 57 FR 13498, 13512 (April 16, 1992).

6. "Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2" (70 FR 71612; November 29, 2005); and

7. "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements" (80 FR 12264; March 6, 2015).

### B. Do the submitted documents meet the evaluation criteria?

The 2014 RACT SIP and Supplement to the 2014 RACT SIP build on the District's previous RACT SIP demonstration for the 1997 8-hour ozone NAAQS, 2009 RACT SIP,<sup>8</sup> and cites to its ozone plan for the 2008 8-hour ozone NAAQS ("2016 Ozone Plan"). The 2014 RACT SIP includes a demonstration that major NO<sub>x</sub> sources in the Valley are covered by RACT rules, a demonstration that the District's NO<sub>x</sub> prohibitory rules satisfy RACT levels of stringency, and a statement that the District's 2016 Ozone Plan will contain additional evaluations. The 2014 RACT SIP did not contain an updated list of major VOC sources, and a demonstration that the District's VOC prohibitory rules satisfy RACT levels of stringency.<sup>9</sup>

Chapter 3.4 of the 2016 Ozone Plan states that in developing its attainment plan, the District updated its RACT evaluation and included VOC sources in

<sup>8</sup> Our January 10, 2012 action (77 FR 1417) finalized a partial approval and partial disapproval of San Joaquin's RACT SIP for the 1997 8-hour ozone NAAQS. The partial disapproval was based on our conclusion that the SJVUAPCD had not demonstrated that four rules satisfy RACT: (Rules 4352 *Solid Fuel Fired Boilers*, 4402 *Crude Oil Production Sumps*, 4625 *Wastewater Separators*, and 4682 *Polystyrene, Polyethylene and Polypropylene Products Manufacturing*), and for which the EPA had not yet approved three additional rules into the SIP as satisfying RACT: (Rules 4566 *Organic Material Composting*, 4694 *Wine Fermentation*, and *Fumigant VOC Regulations*—California Department of Pesticide Regulation). These rules were subsequently approved as satisfying RACT [Rule 4352: 77 FR 66548 (November 6, 2012); Rule Rules 4402 and 4625: 77 FR 64427 (October 22, 2012); Rule 4682: 77 FR 58312 (September 20, 2012); Rule 4566: 77 FR 71129 (November 29, 2012); Rule 4694: 77 FR 71109 (November 29, 2012); and Fumigation: 77 FR 65294 (October 26, 2012)].

<sup>9</sup> The EPA's proposed Implementation Rule for the 2008 8-Hour Ozone NAAQS, June 6, 2013 (78 FR 34178), solicited comments on modifying existing guidance to provide additional flexibility where VOC reductions may have limited impact. Although the EPA did not ultimately adopt this approach (see 80 FR 12264, at 12279; March 6, 2015), the deadline for submitting RACT SIPs was prior to the date that the EPA finalized its SIP Implementation Rule. Instead of submitting a RACT evaluation of its VOC rules in the 2014 RACT SIP, the District submitted an analysis purporting to demonstrate that the nonattainment area is one in which VOC reductions would have limited impact. Because the EPA did not finalize this approach, we are not evaluating this part of the District's submission.

<sup>5</sup> SJVUAPCD 2014 RACT SIP Chapter 3.

<sup>6</sup> See 2016 Ozone Plan available at [http://valleyair.org/Air\\_Quality\\_Plans/Ozone-Plan-2016/Adopted-Plan.pdf](http://valleyair.org/Air_Quality_Plans/Ozone-Plan-2016/Adopted-Plan.pdf) page 3–6.

the evaluation in Appendix C of the *2016 Ozone Plan*. Accordingly, we evaluated these submissions together to determine whether the District has in place RACT-level rules or negative declarations for each required category.

### 1. Efforts To Identity Non-CTG Major Sources Within the District

#### a. SJVUAPCD Action

For NO<sub>x</sub> sources, SJVUAPCD states in its *2014 RACT SIP* that it reviewed its database of current Permits to Operate (PTO) to identify facilities that have the potential to emit at least 10 tons per year of NO<sub>x</sub>. Table 4 of the *2014 RACT SIP* lists the facility name, the type of operation or processes occurring at the facility, and the SIP rule(s) that apply to operations at the facility.

For VOC sources, although the *2014 RACT SIP* did not contain an updated list of major VOC sources, the District's submittal included a copy of the *2009 RACT SIP*, which contained a list of major VOC sources as of 2009. SJVUAPCD subsequently provided a list of additional major stationary sources of VOC since its *2009 RACT SIP*.<sup>10</sup>

#### b. The EPA's Evaluation

For major stationary sources of NO<sub>x</sub>, we reviewed CARB's 2014 emissions inventory database and determined that there were four stationary sources with NO<sub>x</sub> emissions greater than 10 tpy that were not included in Table 4 of the District's *2014 RACT SIP*. To determine if these sources were subject to RACT rules, we searched our internal database and reviewed the facilities' PTOs to identify what equipment was generating NO<sub>x</sub> emissions and whether there was an associated SIP rule. We concluded that each of the facilities' major stationary source NO<sub>x</sub> producing operations were subject to RACT rules with the exception of J.R. Simplot's Nitric Acid plant in Helm, CA. The SJVUAPCD is submitting, in its parallel processing request, as Attachment A to the *Supplement to the 2014 RACT SIP*, the relevant permit conditions for J.R. Simplot's PTO to correct this problem. We reviewed the proposed permit conditions, including the NO<sub>x</sub> limits, continuous emissions monitoring and data quality requirements, and recordkeeping and reporting requirements and conclude they implement NO<sub>x</sub> RACT.

For major non-CTG stationary sources of VOC, we reviewed the District's list

of major VOC sources in its *2009 RACT SIP*, and the two additional major sources of VOC subsequently identified by the District. Based on our review, we conclude that these major VOC sources are covered by rules that implement RACT. We also reviewed CARB's 2014 emissions inventory database and determined that there were several stationary sources with VOC emissions greater than 10 tpy that were not listed in the District's *2009 RACT SIP* and therefore appear to be "new" major sources since the District's *2009 RACT SIP*. Based on a review of the facilities' description as found through an internet search and/or their Standard Industrial Classification (SIC) code, many of these new major sources appear to be related to composting, wineries, or petroleum production, and one source is a commercial printer. We determined that all these sources are already covered by SIP rules that implement RACT. Additional information regarding the EPA's evaluation can be found in the TSD.

### 2. The Bases for Concluding Local Rules Implement RACT

#### a. SJVUAPCD Action

For NO<sub>x</sub> sources, Chapter 4 of the *2014 RACT SIP* states that the District conducted "a literature review and evaluation of the District's stationary and area source regulations that control NO<sub>x</sub> emissions to ensure that all District NO<sub>x</sub> prohibitory rules satisfy RACT requirements." It also states that the District compared ". . . each District rule against federal rules, state regulations, and comparable rules from California's most technologically progressive air districts. The applicability, stringency, and enforceability of every District NO<sub>x</sub> rule was reviewed to ensure all rules meet or exceed federal RACT requirements."<sup>11</sup>

For VOC sources, Chapter 2.2 of the *2014 RACT SIP* states that "[a]lthough the District's VOC rules will not be evaluated as part of the *2014 RACT SIP*, each regulation was evaluated in depth for the *2009 RACT SIP*." As stated earlier, the District subsequently submitted an updated RACT analysis of its VOC rules in Appendix C of its *2016 Ozone Plan*.

#### b. The EPA's Evaluation

The District must submit a RACT certification or a negative declaration for each CTG source category, and must demonstrate that each major stationary source of NO<sub>x</sub> or VOC in the District is covered by a rule that implements RACT-level controls. The fact that the

EPA found that a rule met RACT in a past RACT SIP evaluation is not, by itself, sufficient to establish that the rule still meets RACT, because what is reasonably available changes over time. However, our approval of the *2009 RACT SIP* indicates that RACT rules were in place for the required sources as of 2009, and in concert with the District's updated RACT analysis in the *2014 RACT SIP* and Appendix C of its *2016 Ozone Plan*, we agree with the District's conclusion that rules that met RACT in 2009 continued to meet RACT in 2014.

#### 1. NO<sub>x</sub> Rules

The *2014 RACT SIP* conducts a RACT analysis and concludes that the District's rules for all major sources meet RACT. We agree with this conclusion based on our review of the District's analysis of relevant rules in the *2014 RACT SIP*, *2016 Ozone Plan*, a comparison of specific rules against rules in other air districts, and a comparison against federal regulations and guidance documents, where appropriate. The details of our evaluation are provided in the TSD, including a more focused evaluation of Rule 4103—*Open Burning*, Rule 4311—*Flares*, and Rule 4702—*Internal Combustion Engines*.

#### 2. VOC Rules

The *2016 Ozone Plan*, Appendix C, concludes that the District's rules meet RACT for all applicable rules. We agree with this conclusion based on our review of the District's analysis of relevant rules in the *2016 Ozone Plan*, Appendix C, the *2013 Plan for the Revoked 1-hour ozone standard*, the *2009 RACT SIP*, and additional explanatory materials provided by the District and found in the docket for this action. The details of our evaluation are provided in the TSD, including a more focused evaluation of Rule 4402—*Crude Oil Production Sumps*, Rule 4566—*Organic Material Composting Operations*, Rule 4624—*Transfer of Organic Liquid*, Rule 4653—*Adhesives and Sealants*, Rule 4409—*Components at Light Crude Oil Production Facilities, Natural Gas Production Facilities, and Natural Gas Processing Facilities*, Rule 4605—*Aerospace Assembly and Component Coating Operations*, and Rule 4621—*Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants*.

### 3. Negative Declarations for Source Categories Where There Are No Facilities Subject to a CTG

In lieu of adopting RACT rules, Districts can adopt negative declarations

<sup>10</sup>Email dated May 4, 2018 from Chay Thao (SJVUAPCD) to Stanley Tong (EPA), RE: major VOC sources in SJ since 2009 RACT SIP. See also *2009 RACT SIP*, chapter 3, available at [http://valleyair.org/Air\\_Quality\\_Plans/docs/RACTSIP-2009.pdf](http://valleyair.org/Air_Quality_Plans/docs/RACTSIP-2009.pdf).

<sup>11</sup>*2014 RACT SIP* at Chapters 2.2 and 4.

for CTG source categories if there are no sources in the District covered by the CTG.

The District’s parallel processing request states that it “previously adopted Negative Declarations for CTGs . . . for Shipbuilding and Ship Repair Operations, Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products, and Control of Volatile Organic

Emissions from Manufacture of Pneumatic Rubber Tires . . . and is confirming that the Negative Declarations adopted previously are still valid.” The District’s parallel processing request also proposes to adopt the following negative declarations because the District concludes, based on a review of its permitted sources, SIC codes, and internet searches that there are no stationary sources or emitting

facilities related to the CTG source categories listed in Table 1. The EPA searched CARB’s emissions inventory database and verified that there do not appear to be facilities in the SJVUAPCD that are subject to these CTGs. We believe that these five new negative declarations, and three reaffirmed negative declarations are consistent with the relevant policy and guidance regarding RACT.

TABLE 1—NEGATIVE DECLARATIONS—PARALLEL PROCESSING

CTG document No.	Title
EPA-450/2-77-033 .....	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume IV: Surface Coating of Insulation of Magnet Wire.
EPA-450/2-78-029 .....	Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products.
EPA-450/2-78-030 .....	Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires.
EPA-450/3-83-006 .....	Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.
EPA-450/3-83-008 .....	Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins.
EPA-450/3-84-015 .....	Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry.
EPA-450/4-91-031 .....	Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry.
EPA-453/R-94-032 .....	Alternative Control Technology Document—Surface Coating Operations at Shipbuilding and Ship Repair Facilities.
61 FR-44050 8/27/96 ....	Control Techniques Guidelines for Shipbuilding and Ship Repair Operations (Surface Coating).

Our TSD has more information on our evaluation of the submitted 2014 RACT SIP, Supplement to the 2014 RACT SIP (J.R. Simplot permit to operate and negative declarations), and 2016 Ozone Plan—Chapter 3.4 and Appendix C.

C. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the 2014 RACT SIP, Supplement to the 2014 RACT SIP (relevant permit conditions for the J.R. Simplot Nitric Acid plant in Helm, CA and negative declarations), and 2016 Ozone Plan Chapter 3.4 and Appendix C, because we believe they collectively fulfill the RACT SIP requirements under CAA sections 182(b) and (f) and 40 CFR 51.1112 for the 2008 ozone NAAQS. As noted above, our proposed action also relies upon our evaluation of the public draft version of the relevant permit conditions for the J.R. Simplot Nitric Acid plant in Helm, CA and on the negative declarations planned for adoption by the SJVUAPCD in June 2018, which we will not take final action on until they are adopted and submitted to us as a revision to the California SIP. If the Supplement to the 2014 RACT SIP that we have evaluated were to be revised significantly prior to adoption and submittal, we would need to reconsider our proposed action accordingly.

We will accept comments from the public on this proposal until June 18, 2018. If we take final action to approve the submitted documents, our final action will incorporate them into the federally enforceable SIP.

III. Incorporation by Reference

In this rule the 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, the EPA is proposing to incorporate by reference certain permit conditions for the J.R. Simplot Nitric Acid plant in Helm, CA as described above in the preamble. The EPA has made, and will continue to make, these materials available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed 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 (Pub. L. 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 8, 2018.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2018-10571 Filed 5-16-18; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2016-0603; FRL-9978-11-Region 5]

#### Air Plan Approval; Minnesota; PSD Infrastructure SIP Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve elements of a state implementation plan (SIP) submission from Minnesota regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) relating to Prevention of Significant Deterioration (PSD) for the 1997 ozone, 1997 fine particulate

(PM<sub>2.5</sub>), 2006 PM<sub>2.5</sub>, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO<sub>2</sub>), 2010 sulfur dioxide (SO<sub>2</sub>), and 2012 PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS). The Minnesota Pollution Control Agency (MPCA) submitted the SIP revision to EPA on October 4, 2016.

**DATES:** Comments must be received on or before June 18, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2016-0603 at <http://www.regulations.gov>, or via email to [aburano.douglas@epa.gov](mailto:aburano.douglas@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:** Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4489, [svingen.eric@epa.gov](mailto:svingen.eric@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background of this SIP submission?
- II. What guidance is EPA using to evaluate this SIP submission?
- III. What is the result of EPA’s review of this SIP submission?
- IV. What action is EPA taking?
- V. Statutory and Executive Order Reviews

#### I. What is the background of this SIP submission?

This rulemaking proposes to approve a SIP submission from MPCA dated October 4, 2016, which addresses infrastructure requirements relating to PSD for the 1997 ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

The requirement for states to make infrastructure SIP submissions arises out of CAA section 110(a)(1). Pursuant to CAA section 110(a)(1), states must make SIP submissions “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” and these SIP submissions are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA’s taking any action other than promulgating a new or revised NAAQS. CAA section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA section 110(a)(1) and (2) as “infrastructure SIP” submissions. Although the term “infrastructure SIP” does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA. This specific rulemaking is only taking action on the infrastructure SIP elements relating to PSD, provided at CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(f).

In previous rulemakings, EPA addressed Minnesota’s infrastructure obligations under the various NAAQS. On July 13, 2011 (76 FR 41075), EPA approved most elements of Minnesota’s infrastructure SIP submittal for the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS. On October 29, 2012 (77 FR 65478), EPA approved most elements of Minnesota’s infrastructure SIP submittal for the 2006 PM<sub>2.5</sub> NAAQS. On July 16, 2014 (79 FR 41439), EPA approved most elements of Minnesota’s infrastructure SIP submittal for the 2008 Pb NAAQS. Finally, on October 20, 2015 (80 FR 63436), EPA approved most elements of Minnesota’s infrastructure SIP submittal for the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS. However, because Minnesota did not have an approved