

direct costs on tribal governments or preempt tribal law.

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

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

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

Dated: November 6, 2018.

**Onis “Trey” Glenn, III,**

*Regional Administrator, Region 4.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2018–0369 FRL–9986–29–Region 5]

#### Air Plan Approval; Ohio; Ohio Less Than 10 TPY BAT Exemption

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve, under the Clean Air Act (CAA), revisions to Ohio’s State Implementation Plan (SIP) as requested by the Ohio Environmental Protection Agency (OEPA) on May 22, 2018. OEPA has submitted, for approval, revisions that exempt sources that emit less than 10 tons per year (tpy) from the need to employ Best Available Technology (BAT). EPA is proposing to approve these revisions because they are consistent with Federal regulations governing state permit programs.

**DATES:** Comments must be received on or before December 14, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2018–0369 at <http://www.regulations.gov>, or via email to [damico.genevieve@epa.gov](mailto:damico.genevieve@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.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:** Richard Angelbeck, Environmental Scientist, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9698, [angelbeck.richard@epa.gov](mailto:angelbeck.richard@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 revisions did OEPA submit?
- II. Do the revisions comply with section 110(l) of the Clean Air Act?
- III. What action is EPA taking?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

#### I. What revisions did OEPA submit?

On May 22, 2018, OEPA submitted a SIP revision to Ohio Administrative Code (OAC) rule 3745–31–05(A)(3)(a)(ii), which is its BAT rule. This revision exempts the smaller emitting sources, those that emit less than 10 tpy of each criteria pollutant, from the need to employ BAT. OEPA’s less than 10 tpy BAT exemption is currently in OEPA’s OAC 3745–31–05(A)(3)(a)(ii) and reads: “*BAT is not required if the air contaminant source was installed or modified on or after August 3, 2006 and has the potential to emit (PTE), taking into account air pollution controls installed on the source, less than ten tons per year of emissions of an air contaminant or precursor of an air contaminant for which a national ambient air quality standard has been adopted under the Clean Air Act.*”

Ohio’s Federally approved construction program, OAC 3745–31 (“Permits to Install New Sources of Pollution”) provides the authority for OEPA to issue Permits to Install (PTI) to new sources of air pollution or modifications to existing sources of air

pollution. For attainment areas, the program was conditionally approved into Ohio’s SIP on October 10, 2001 (66 FR 51570), and fully approved on January 22, 2003 (68 FR 2909). For nonattainment areas, the program was fully approved on January 10, 2002 (68 FR 1366). On February 20, 2013, OEPA’s SIP was revised (78 FR 28547) to combine the PTI and Permit to Operate (PTO) programs into a single Permit to Install and Operate (PTIO) program so that a minor source not subject to title V of the Clean Air Act in Ohio would be issued a single PTIO instead of a PTI and a PTO permit.

On August 3, 2006, the Ohio General Assembly passed Senate Bill 265 (SB 265) which required OEPA to modify several of its BAT rules. OEPA’s BAT is an air permitting mechanism to help control emissions in minor air permits. BAT can be any combination of work practices, air pollution control devices, raw material specifications, throughput limitations, source design characteristics, and OEPA does an evaluation of the annualized cost per ton of air pollutant removed when determining BAT. One of the changes implemented was the less than 10 tpy BAT exemption. To implement the SB 265 changes, OEPA adopted revisions under OAC Chapter 3745–31–05(A)(3)(b) on November 20, 2006, which became effective on December 1, 2006. On January 18, 2008, OEPA requested that EPA approve this rule language as a revision to Ohio’s SIP. EPA responded with a June 5, 2008 letter to OEPA indicating that the request was incomplete due to a lack of a CAA section 110(l) demonstration, thus returning the request back to OEPA. On June 2, 2008, OEPA moved the language in OAC rule 3745–31–05 from paragraph (A)(3)(b) to (A)(3)(a)(ii) which became effective at the state level on June 30, 2008. The rule language contained in OAC rule 3745–31–05(A)(3)(a)(ii) was carried over in OAC rule 3745–31–05, which was adopted on April 20, 2016, and became effective at the state level as of May 1, 2016, and is what OEPA is now requesting for EPA approval as a revision to its SIP. EPA considered this May 22, 2018 submittal to be complete.

#### II. Do the revisions comply with section 110(l) of the Clean Air Act?

OEPA’s May 22, 2018 SIP revision submittal included a 110(l) demonstration. This demonstration included an extensive analysis to show the impact that the less than 10 tpy BAT exemption would have on emissions. This analysis evaluated over 400 permits, representing more than 80

source classification codes and 36 different types of categories of sources. Each criteria pollutant was evaluated and then a comparison was made between the emission limit that would occur if BAT applied and if BAT did not apply to the less than 10 tpy sources. The analysis concludes that there would be a negligible increase in emissions due to the less than 10 tpy BAT exemption.

The 110(l) demonstration included a quantitative and qualitative analysis. The analysis estimated an emission increase of 36.89 tpy of volatile organic compounds (VOC) emissions in attainment areas and nonattainment areas, combined, when applying the less than 10 tpy BAT exemption compared to BAT-based emissions. That increase in VOC emissions represented a very small amount (0.12%) of the total actual point source VOC emissions reported for that year, 2010 in Ohio.

The 110(l) analysis estimated the VOC emission increases in the Ohio nonattainment areas combined, as well as to each of the three Ohio ozone nonattainment areas (Cleveland, Cincinnati, Columbus). This analysis links the estimated VOC increases to each of the Ohio ozone nonattainment areas and demonstrates that each nonattainment area will not be negatively impacted by the estimated increase in emissions. The analysis showed an estimated increase of 25.53 tpy of VOC in Ohio nonattainment areas which represented 0.2% of the 2010 total VOC emissions in Ohio. OEPA's analysis also quantified the estimated VOC increases in the three Ohio nonattainment areas: 18.65 tpy in the Cincinnati area, 4.88 tpy in the Cleveland/Akron/Lorain area, and 0 tpy in the Columbus area. OEPA's analysis further broke out the 18.65 tpy Cincinnati nonattainment area VOC emission increase to the following two areas: 13 tpy increase in Hamilton County, and 5.6 tpy in Butler County.

To address the VOC emission increases in the Cincinnati and Cleveland nonattainment areas, OEPA opted to use VOC emission offsets to mitigate any possibility of adverse air quality impact that may result from the small increase in VOC emissions. These relied-upon emission offsets are from permanently shut down emission units at one facility in Ashtabula (4.88 tpy offset VOCs) and one facility in Hamilton (18.65 tpy offset VOCs) counties located in the Cincinnati and Cleveland nonattainment areas, respectively. The 4.88 tpy offset VOCs in Ashtabula County are from the permanently shut down emission unit R010 at the RMC USA Inc. facility

(Facility ID 0204000423), the emission unit was permanently shut down on 7/16/2014. The 18.65 tpy offset VOCs in Hamilton County are from the permanently shut down emission unit P001 at the Rock-Tenn Converting Co. facility (Facility ID 1431070952), the emission unit was permanently shut down on 11/21/2014. This 18.65 tpy offset VOCs is to offset the possible VOC increases in Hamilton and Butler Counties, combined. The VOC emission reductions have been verified and validated through OEPA's Stars II system and are considered creditable since they are surplus, quantifiable, permanent and federally enforceable. OEPA maintains a database of all emission reductions used for purpose of CAA 110(l) demonstrations and these VOC reductions will be tracked within this database to ensure they cannot be used again. OEPA has committed to permanently retire the 25.33 tpy of VOC emissions upon EPA's approval of this SIP revision and EPA's proposed approval of this SIP revision is based on that commitment. The VOC emission reductions from the permanent emission unit shut downs will offset the predicted VOC emissions increase in these VOC nonattainment areas resulting from the less than 10 tpy BAT exemption and ensure that plans to bring the VOC nonattainment with the NAAQS are not compromised and thus it is expected there will be no adverse impact on air quality.

OEPA's 110(l) analysis demonstrated that the air quality will not be negatively impacted due to the small increase in emissions as result of the less than 10 tpy BAT exemption. OEPA's 110(l) analysis demonstrated that the VOC emission offsets from the shutdown emission units at the two facilities will counterbalance the estimated emission increase in VOC emissions due to the less than 10 tpy BAT exemption and will not have a negative impact on air quality nor cause backsliding from Ohio's reasonable further progress plans. OEPA will formally retire the VOC emission offsets in order to receive final approval of this SIP revision. OEPA's 110(l) analysis also demonstrated that the small increase in VOC emissions in Ohio's ozone attainment areas will not have a negative impact on air quality because the increase in VOC emissions is very small compared to the VOC emissions emitted state-wide.

### III. What action is EPA taking?

EPA is proposing approval, into the SIP, of the rule revision to OAC 3745-31-05(A)(3)(a)(ii) that OEPA submitted on May 22, 2018. The SIP revision

submitted, described in section I, above, is consistent with Federal regulations governing state permitting programs. See section II above. EPA is also soliciting comment on this proposed approval.

### IV. Incorporation by Reference

In this rule, 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 revisions to Ohio Administrative Code 3745-31-05(A)(3)(a)(ii), effective on May 1, 2016. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 5 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 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 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, 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).

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

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

Dated: October 30, 2018.

**Cathy Stepp,**

*Regional Administrator, Region 5.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2017–0191; FRL–9986–30–Region 5]

#### **Air Plan Approval; Michigan; Infrastructure SIP Requirements for the 2012 PM<sub>2.5</sub> NAAQS; Multistate Transport**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve elements of the State Implementation Plan (SIP) submission from Michigan regarding the infrastructure

requirements of section 110 of the Clean Air Act (CAA) for the 2012 annual fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS or standard). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action pertains specifically to infrastructure requirements concerning interstate transport provisions.

**DATES:** Comments must be received on or before December 14, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2017–0191 at <http://www.regulations.gov>, or via email to [blakley.pamela@epa.gov](mailto:blakley.pamela@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.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:**

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#### **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 and memoranda is EPA using to evaluate this SIP submission?

III. EPA's Review

IV. What action is EPA taking?

V. Statutory and Executive Order Reviews

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

This rulemaking addresses a submission from the Michigan Department of Environmental Quality dated March 23, 2017, which describes its infrastructure SIP for the 2012 annual PM<sub>2.5</sub> NAAQS (78 FR 3086). Specifically, this rulemaking addresses the portion of the submission dealing with interstate pollution transport under CAA Section 110(a)(2)(D)(i), otherwise known as the “good neighbor” provision. The requirement for states to make a SIP submission of this type arises from Section 110(a)(1) of the CAA. Pursuant to Section 110(a)(1), states must submit “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),” a plan that provides 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. Section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submission must address. EPA commonly refers to such state plans as “infrastructure SIPs.”

#### **II. What guidance and memoranda is EPA using to evaluate this SIP submission?**

EPA highlighted the statutory requirement to submit infrastructure SIPs within three years of promulgation of a new NAAQS in an October 2, 2007, guidance document entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards” (2007 guidance). EPA has issued additional guidance documents and memoranda, including a September 13, 2013, guidance document titled “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)” (2013 guidance).

The most recent relevant document is a memorandum published on March 17, 2016, titled “Information on the Interstate Transport “Good Neighbor” Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)” (2016 memorandum).