

Approved: February 6, 2019.

**Jeffrey M. Martin,**

*Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2018-0212; FRL-9984-75-Region 1]

#### **Air Plan Approval; Connecticut; Prevention of Significant Deterioration; Revisions to the Prevention of Significant Deterioration Greenhouse Gas Permitting Authority**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision affects provisions applicable to greenhouse gases (GHGs) in the EPA's Prevention of Significant Deterioration (PSD) permit program. Connecticut requested the revision in response to the June 23, 2014, U.S. Supreme Court's decision in *Utility Air Regulatory Group (UARG) v. EPA* and the April 10, 2015, Amended Judgment by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Coalition for Responsible Regulation v. EPA*. The intended effect of this action is to clarify that the State's PSD rules do not require a source to obtain a permit solely because the source emits or has the potential to emit (PTE) GHGs: Above the PSD applicability thresholds for new major sources or for which there is a significant emissions increase from a modification. This action is being taken in accordance with the Clean Air Act.

**DATES:** This rule is effective on March 18, 2019.

**ADDRESSES:** The EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2018-0212. All documents in the docket are listed on the <https://www.regulations.gov> website. 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 <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, Boston, MA. The EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Donald Dahl, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code OEP05-2), Boston, MA 02109-3912, tel. (617) 918-1657, email [dahl.donald@epa.gov](mailto:dahl.donald@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 15, 2018 (83 FR 27936), the EPA published a Notice of Proposed Rulemaking (NPRM) for the State of Connecticut. The NPRM proposed approval of removing the requirement that a source would have to obtain a PSD permit solely due to its GHG emissions, commonly known as “Step 2” sources. The formal SIP revision was submitted by Connecticut on February 15, 2018. The rationale for the EPA's proposed action is explained in the NPRM and will not be restated here.

#### **II. Response to Comments**

The EPA received four comments during the comment period. One comment supported the EPA's proposed action. Three comments discuss subjects outside the scope of this SIP action, do not explain (or provide a legal basis for) how the proposed action should differ in any way, and make no specific mention of the proposed action. As such, these three comments are not germane and do not require further response to finalize the action as proposed.

#### **III. Final Action**

The EPA is approving Connecticut's removal from Connecticut's SIP of the requirement that sources must obtain a

PSD permit based solely on a source's GHG emissions.

#### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference revisions to RSCA Section 22a-174-3a(a)(1) entitled “Applicability,” RSCA Section 22a-174-3a(j)(1) for when control technology applies, and RSCA Sections 22a-174-3a(k)(1) and (2) regarding applicability of GHGs for major stationary sources and major modifications, in the amendments to 40 CFR part 52 set forth below. All three state regulations were effective February 8, 2018. The EPA has made, and will continue to make, these documents generally available electronically through <https://www.regulations.gov>.

#### **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, the 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);
- This action is not an Executive Order 13771 regulatory action because this action is not significant 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, 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 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).

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. The 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 April 16, 2019. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 7, 2019.

**Deborah Szaro,**

*Acting Regional Administrator, EPA Region 1.*

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 H—Connecticut

■ 2. Section 52.370 is amended by adding paragraph (c)(120) to read as follows:

#### § 52.370 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(120) Revisions to the State Implementation Plan submitted by the Connecticut Department of Energy and Environmental Protection on February 28, 2018.

(i) *Incorporation by reference.* (A) Regulations of Connecticut State Agencies, Section 22a-174-3a, “Permit to Construct and Operate Stationary Sources,” amended February 8, 2018:

(1) 22a-174-3a(a)(1), “Applicability and Exemptions,” except (a)(1)(C) and (G);

(2) 22a-174-3a(j)(1), “Best Available Control Technology (BACT);” and

(3) 22a-174-3a(k)(1) and (2), “Permit Requirements for Attainment Areas: Prevention of Significant Deterioration of Air Quality (PSD) Program.”

■ 3. In § 52.385, Table 52.385 is amended by adding an entry for state citation 22a-174-3a in numerical order by state citation and date approved by EPA to read as follows:

#### § 52.385 EPA-approved Connecticut regulations.

\* \* \* \* \*

TABLE 52.385—EPA-APPROVED REGULATIONS

Connecticut State citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
22a-174-3a .....	Permit to Construct and Operate Stationary Sources.	2/8/2018	2/15/2019	[Insert <b>Federal Register</b> citation].	(c)(120)	Revised section 22a-174-3a(a)(1) entitled “Applicability,” section 22a-174-3a(j)(1) for when control technology applies, and sections 22a-174-3a(k)(1) and (2) regarding applicability of GHGs for major stationary sources and major modifications.