

Designated representative means the Coast Guard commissioned, warrant, or petty officer operating the on scene Coast Guard vessel designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the security zone.

(c) **Regulations.** (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter the security zone described in paragraph (a) of this section, contact the COTP or the COTP's representative by telephone at 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessel enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) A person or vessel operating in the security zone described in paragraph (a)(1) of this section must not enter waters within 1,000 yards of the on scene Coast Guard vessel or test equipment being used by Coast Guard personnel.

(d) **Enforcement periods.** This section will be enforced 9 a.m. to 10 p.m. on April 25, 2021, and those same hours on April 26, 2021, April 27, 2021, April 28, 2021, April 29, 2021, April 30, 2021, May 1, 2021, May 2, 2021, May 3, 2021, May 4, 2021, May 5, 2021, May 6, 2021, May 7, 2021 and May 8, 2021.

Dated: March 9, 2021.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2021-05391 Filed 3-15-21; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 52

[EPA-R09-OAR-2021-0018; FRL-10020-02-Region 9]

Rescission of the Source-Specific Federal Implementation Plan for Navajo Generating Station, Navajo Nation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to rescind

the federal implementation plan (FIP) that regulates emissions from the Navajo Generating Station (NGS), a coal-fired power plant that was located on the reservation lands of the Navajo Nation near Page, Arizona. NGS permanently ceased operations on November 18, 2019, and the Clean Air Act (CAA or "Act") operating permit for this facility has expired.

DATES: Any comments on this proposal must arrive by April 15, 2021.

ADDRESSES: Submit your comments, identified by Docket ID number EPA-R09-OAR-2021-0018, at <http://www.regulations.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*. 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, or if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, 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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Anita Lee, EPA Region IX, (415) 972-3958, lee.anita@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us," and "our" refer to the EPA.

Table of Contents

- I. Background
 - A. Action
 - B. Facility
 - C. Attainment Status
 - D. The EPA's Authority To Promulgate a FIP in Indian Country
 - E. Historical Overview of NGS FIP Actions
- II. Basis for Proposed Action
- III. Solicitation of Comments
- IV. Statutory and Executive Order Reviews

I. Background

A. Action

In this action, the EPA is proposing to rescind the FIP for NGS that we promulgated on October 3, 1991 ("1991 FIP"), March 5, 2010 ("2010 FIP"), and August 8, 2014 ("2014 FIP").¹ The provisions of the 1991 action are codified in the Code of Federal Regulations (CFR) at 40 CFR 52.145(d), the provisions of the 2010 action are codified at 40 CFR 49.5513(a) through (i), and provisions of the 2014 action are codified at 40 CFR 49.5513(j). We refer collectively to the provisions from the 1991, 2010, and 2014 actions as the "FIP" or the "NGS FIP." The NGS FIP includes federally enforceable emissions limitations that apply to the fossil fuel-fired steam generating equipment, designated as Units 1, 2, and 3, equipment associated with the coal and ash handling, and the two auxiliary steam boilers at NGS. These emissions limitations apply to emissions of particulate matter (PM), sulfur dioxide (SO₂), and oxides of nitrogen (NO_x), and opacity. The EPA is proposing to rescind the NGS FIP and remove the provisions of the FIP from 40 CFR 52.145(d) and 40 CFR 49.5513.

B. Facility

NGS was a coal-fired power plant that ceased operation in 2019, located on the reservation lands of the Navajo Nation, just east of Page, Arizona, and approximately 135 miles north of Flagstaff. NGS was co-owned by several entities and operated by Salt River Project Agricultural Improvement and Power District ("SRP").² The facility operated three units, each with a capacity of 750 megawatts (MW) net generation, with a total capacity of 2250 MW. Operations at the facility produced air pollutant emissions, including emissions of SO₂, NO_x, and PM. Existing pollution control equipment at NGS included wet flue gas desulfurization units for SO₂ and PM removal, electrostatic precipitators for PM removal, and low-NO_x burners with separated over-fire air to reduce NO_x formation during the combustion process. Had the facility not ceased operations, the owner or operator of NGS would have taken steps by December 31, 2019 to reduce emissions

¹ 56 FR 50172 (October 3, 1991), 75 FR 10174 (March 5, 2010), and 79 FR 46552 (August 8, 2014).

² The original participants in NGS were the United States Bureau of Reclamation, SRP, Arizona Public Service Company, Tucson Electric Company, NV Energy, and the Los Angeles Department of Water and Power (LADWP). SRP, serves as the facility operator. Prior to the permanent closure of NGS, SRP acquired the LADWP participant share in NGS.

of NO_x further, pursuant to the requirements of the 2014 FIP.

C. Attainment Status

The area around NGS is designated attainment, unclassifiable/attainment, or unclassifiable for all criteria pollutants under the Act.³

D. The EPA's Authority To Promulgate a FIP in Indian Country

When the CAA was amended in 1990, Congress included a new provision, section 301(d), granting the EPA authority to treat tribes in the same manner as states where appropriate.⁴ In 1998, the EPA promulgated regulations known as the Tribal Authority Rule (TAR).⁵ The EPA's promulgation of the TAR clarified, among other things, that state air quality regulations generally do not, under the CAA, apply to facilities located anywhere within the exterior boundaries of Indian reservations.⁶ Prior to the addition of section 301(d) and the promulgation of the TAR, some states had included emission limitations in their state implementation plans (SIPs) that they may have believed could apply under the CAA to private facilities operating on adjacent Indian reservations.

In the preambles to the proposed and final 1998 TAR, the EPA generally discussed the legal basis in the CAA that authorizes the EPA to regulate sources of air pollution in Indian country.⁷ The EPA concluded that the CAA authorizes the EPA to protect air quality throughout Indian country.⁸ The TAR, therefore, provides that the EPA “[s]hall promulgate without unreasonable delay such federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections [301](a) and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the

completeness criteria of 40 CFR part 51, Appendix V, or does not receive EPA approval of a submitted tribal implementation plan.”⁹

E. Historical Overview of NGS FIP Actions

On December 2, 1980, EPA issued regulations addressing visibility impairment that is traceable or “reasonably attributable” to a single source or small group of sources.¹⁰ These regulations required a number of states to submit SIPs no later than September 2, 1981. Most states, including Arizona, failed to submit SIPs as called for by the regulations. Accordingly, in 1987, the EPA issued visibility FIPs consisting of general plan requirements and long-term strategies for 29 states including Arizona.¹¹

In 1989, based on a report submitted by the National Park Service, the EPA proposed to find that a portion of the visibility impairment in Grand Canyon National Park was reasonably attributable to NGS.¹² Under the 1991 FIP, NGS was required to phase-in compliance with the SO₂ emissions limit by installing scrubbers in 1997, 1998, and 1999.¹³ In establishing the SO₂ emissions limit for NGS in the final 1991 FIP, the EPA determined that the FIP would provide for greater reasonable progress toward the national visibility goal than implementation of best available retrofit technology (BART).¹⁴

On September 8, 1999, the EPA proposed a source-specific FIP for NGS.¹⁵ The 1999 proposed FIP stated: “Although the facility has been historically regulated by Arizona since its construction, the state lacks jurisdiction over the facility or its owners or operations for CAA compliance or enforcement purposes.” The EPA intended for the proposed action in 1999 to “federalize” the

emission limitations that Arizona had erroneously included in its SIP.¹⁶ The EPA received comments on the proposed FIP but did not finalize the proposal.

The EPA published a new proposed rule to promulgate federally enforceable numerical emissions limitations for PM and SO₂ in 2006 and took action to finalize it in 2010.¹⁷ The 2010 FIP also established an opacity limit and a requirement for specific control measures to limit dust emissions. In the 2010 FIP, the EPA determined that the emissions limitations for PM and SO₂ were more stringent than, or at least as stringent as, the emissions limitations that had historically applied at NGS pursuant to an operating permit issued by Arizona. Therefore, the EPA concluded that air quality in this area would be positively impacted by the 2010 FIP.¹⁸

On August 8, 2014, the EPA promulgated a final rule that established emissions limitations for NO_x emissions from NGS under BART provisions of the Regional Haze Rule.¹⁹ We finalized an alternative to BART based on agreed-upon recommendations developed by a group of diverse stakeholders. The 2014 FIP limited emissions of NO_x from NGS by establishing a long-term facility-wide cap on total NO_x emissions from 2009 to 2044 and required the implementation of one of several alternative operating scenarios to ensure that the 2009 to 2044 cap was met.

II. Basis for Proposed Action

In 2017, due to the changing economics of the energy industry, the owners of NGS voted to permanently close the facility at the end of 2019.²⁰ On November 27, 2019, consistent with the reporting requirements in the alternative to BART provisions of the NGS FIP, SRP notified the EPA that it would not implement any of the BART alternatives in the FIP due to the permanent cessation of operations at NGS.²¹ In that letter, SRP noted that Unit 3 permanently ceased operations on September 19, 2019, and that Units 1 and 2 permanently ceased operations on November 18, 2019. This closure

³ 40 CFR 81.303.

⁴ 40 U.S.C. 7601(d).

⁵ 40 CFR parts 9, 35, 49, 50, and 81. See also 63 FR 7254 (February 12, 1998).

⁶ 63 FR 7254 at 7258 (noting that unless a state has explicitly demonstrated its authority and has been expressly approved by the EPA to implement CAA programs in Indian country, the EPA is the appropriate entity to implement CAA programs prior to tribal primacy), *Arizona Public Service Company v. EPA.*, 211 F.3d 1280 (D.C. Cir. 2000), cert. denied sub nom, *Michigan v. EPA.*, 532 U.S. 970 (2001) (upholding the TAR); see also *Alaska v. Native Village of Venetie Tribal Government*, 533 U.S. 520, 526 n.1 (1998) (primary jurisdiction over Indian country generally lies with federal government and tribes, not with states).

⁷ 59 FR 43956 (August 25, 1994); 63 FR 7253 (February 12, 1998).

⁸ 63 FR 7253 at 7262 (February 12, 1998); 59 FR 43956 at 43960–43961 (August 25, 1994) (citing, among other things, to CAA sections 101(b)(1), 301(a), and 301(d)).

⁹ 63 FR 7273, codified at 40 CFR 49.11(a). In the preamble to the final TAR, the EPA explained that it was inappropriate to treat tribes in the same manner as states with respect to section 110(c) of the Act, which directs the EPA to promulgate a FIP within 2 years after the EPA finds a state has failed to submit a complete state plan or within 2 years after the EPA disapproval of a state plan. Although the EPA is not required to promulgate a FIP within the 2-year period for tribes, the EPA promulgated 40 CFR 49.11(a) to clarify that the EPA will continue to be subject to the basic requirement to issue any necessary or appropriate FIP provisions for affected tribal areas within some reasonable time. See 63 FR 7264–65.

¹⁰ 45 FR 80084 (December 2, 1980), codified at 40 CFR 51.300–51.307.

¹¹ 52 FR 45132 (November 24, 1987).

¹² 56 FR 50172 (October 3, 1991), codified at 40 CFR 52.145.

¹³ 40 CFR 52.145(d)(7).

¹⁴ 56 FR 50172 (October 3, 1991).

¹⁵ 64 FR 48725 (September 8, 1999).

¹⁶ 64 FR 48725, 48727.

¹⁷ 75 FR 10179 (March 5, 2010) codified at 40 CFR 49.24(a) through (i) and redesignated to 40 CFR 49.5513(a) through (i). See 76 FR 23879 (April 29, 2011).

¹⁸ 75 FR 10174 (March 5, 2010).

¹⁹ 79 FR 46514 (August 8, 2014).

²⁰ <https://www.powermag.com/utility-owners-vote-to-shut-down-coal-fired-2-2-gw-navajo-generating-station/>.

²¹ Letter dated November 27, 2019, from Kenneth Joe Frazier, SRP, to Elizabeth Adams, EPA, regarding “Navajo Generating Station—Notification of BART Alternative.”

timeframe was consistent with the terms of the NGS Extension Lease agreement between the Navajo Nation and the owners of NGS prohibiting the combustion of coal at NGS after December 22, 2019. After November 18, 2019, the owners and operator of NGS began decommissioning the facility. On November 30, 2020, SRP withdrew its CAA title V operating permit renewal application that it had submitted to the Navajo Nation Environmental Protection Agency (Navajo Nation EPA), and requested that the EPA rescind the NGS FIP.²²

On December 18, 2020, the Navajo Nation EPA notified SRP that effective December 1, 2020, expiration of the title V permit terminated the ability of NGS to be operated.²³ In that letter, the Navajo Nation EPA noted that NGS had been operating under Permit No. NN-ROP-05-06, a title V permit issued on July 7, 2008. The permit was set to expire on July 7, 2013; however, because SRP submitted a timely and complete permit renewal application on March 4, 2013, NGS was able to continue to operate under the existing title V operating permit while awaiting action by the Navajo Nation EPA on the renewal permit application.²⁴ As a complete renewal application is no longer submitted and pending action by the Navajo Nation EPA, withdrawal of the renewal permit application caused Permit No. NN-ROP-05-06 to expire.²⁵ Expiration of the operating permit terminated the facility's right to operate.

In its rescission request, SRP stated that since ceasing operations all equipment permitted to operate under the title V permit, which includes all equipment subject to the NGS FIP, are non-operational and in the process of being removed. In addition, electrical and mechanical equipment had been removed, preventing the combustion of fuel and equipment operation and eliminating sources of air pollutant emissions from the permitted equipment. The Kayenta Mine, which supplied coal to NGS, has permanently

closed, and the dedicated rail line linking the mine to NGS has been dismantled. In addition, the three 775-foot stacks at NGS have been demolished.²⁶

Because NGS has permanently ceased operation and all equipment subject to the NGS FIP is no longer operational, and because the facility no longer holds a valid CAA title V permit to operate, the EPA is proposing to rescind the FIP for NGS at 40 CFR 52.145(d) and 40 CFR 49.5513.

The provisions of the 1991 FIP at 40 CFR 52.145(d) applied to the fossil fuel-fired steam-generating units designated as Units 1, 2, and 3, and NGS and addressed emissions limitations for SO₂, specifications for how compliance with the emissions limitations would be determined, requirements for continuous emissions monitoring, and reporting requirements.²⁷ Because the SO₂ emissions limitations in the 1991 FIP were achievable with the installation and operation of new flue gas desulfurization units, the 1991 FIP also specified compliance dates, schedules of compliance and associated reporting requirements.²⁸ Finally, the 1991 FIP also included various provisions related to equipment operation and maintenance.²⁹

Under 110(l) of the CAA, the EPA shall not approve a revision of an implementation plan if the revision would interfere with any applicable requirements concerning attainment, reasonable further progress, or any other applicable requirement of the CAA. Although this provision does not apply directly to the EPA's revision or rescission of a FIP, we have nonetheless considered whether rescission of the NGS FIP would interfere with any CAA requirements.

The 1991 FIP established emissions limitations for SO₂ emitted from the fossil fuel-fired steam-generating units at NGS, as well as associated compliance, monitoring, and reporting requirements for the flue gas desulfurization units. Because NGS has permanently ceased operation, these provisions are no longer necessary to satisfy any CAA requirements related to regional haze and visibility protection. In addition, because the area surrounding NGS is designated attainment, unclassifiable/attainment, or unclassifiable for all NAAQS, the provisions of the 1991 FIP are not

needed to satisfy requirements concerning attainment or reasonable further progress. Therefore, we propose to find that rescission of the 1991 FIP will not interfere with any applicable CAA requirements.

The provisions of the 2010 FIP at 40 CFR 49.5513(a) through (i) apply to Units 1, 2, and 3, equipment associated with coal and ash handling, and the two auxiliary steam boilers at NGS, and established emissions limitations and associated continuous monitoring, testing and reporting requirements for SO₂, PM, dust, and opacity.³⁰ The 2010 FIP also includes provisions related to compliance certifications, equipment operations, and enforcement.³¹ Although the testing and monitoring requirements at 40 CFR 49.5513(e) generally relate to continuous emissions monitoring and periodic source testing for SO₂, NO_x, and PM emissions from the facility, one provision required SRP to install, maintain and operate non-regulatory ambient monitors at the Glen Canyon Dam for PM, nitrogen dioxide (NO₂), SO₂, and ozone.³² The 2010 FIP did not elucidate the rationale for ambient monitoring but generally stated that “[t]his final action will help to advance the goals of ensuring continued maintenance of the national ambient air quality standards and protecting visibility.”³³

Because NGS has permanently ceased operation, the air pollutants regulated under the 2010 FIP are no longer emitted from the facility, and the facility no longer operates the coal handling and storage equipment or the fly ash handling and storage equipment. Therefore, the provisions of the 2010 FIP that regulate emissions of air pollutants from NGS are no longer necessary to satisfy any CAA requirements related to regional haze and visibility protection. In addition, the area surrounding NGS is designated attainment, unclassifiable/attainment, or unclassifiable for all NAAQS, therefore, the provisions of the 2010 FIP are not needed to satisfy requirements concerning attainment or reasonable further progress. The ambient monitors at the Glen Canyon Dam are operated by SRP and are not relied upon by any state, local or tribal agency to satisfy the minimum monitoring requirements in 40 CFR part 58. Furthermore, data from the monitors are not reported to the EPA's Air Quality System. For these reasons, we propose to determine that the 2010 FIP, including the provisions

²² Letters dated November 30, 2020 from Joe Frazier, SRP, to Oliver Whaley, Navajo Nation EPA, regarding “Request to Withdraw the Pending Renewal Application for the Navajo Generating Station Title V Permit to Operate—Permit No. NN-ROP 05-06,” and dated November 30, 2020 from Joe Frazier, SRP to John Busterud, EPA Region IX, regarding “Request to Rescind Navajo Generating Station Federal Implementation Plan at 40 CFR 52.145(d) and 49.5513.”

²³ Letter dated December 18, 2020, from Ronnie Ben, Delegated Executive Director, Navajo Nation EPA, to Joe Frazier, Director General Engineering, SRP, Subject: “Expiration of Title V Permit to Operate for Navajo Generating Station—Permit No. NN-ROP-05-06.”

²⁴ 40 CFR 71.7(c)(3).

²⁵ Condition IX.R of Permit No. NN-ROP-05-06.

²⁶ See, e.g., <https://www.powermag.com/explosions-topple-smokestacks-of-iconic-navajo-generating-station/>, accessed on December 23, 2020.

²⁷ 40 CFR 52.145 (d)(1) through (5).

²⁸ 40 CFR 52.145(d)(6) through (8).

²⁹ 40 CFR 52.145(d)(9) though (13).

³⁰ 40 CFR 49.5513(a) through (f).

³¹ 40 CFR 49.5513(g) through (i).

³² 40 CFR 49.5513(e)(6).

³³ 43 FR 10174, 10175 (March 5, 2010).

requiring operation of ambient monitors operated at the Glen Canyon Dam, is not needed to satisfy requirements related to attainment, reasonable further progress, visibility protection, or any other CAA requirements.

The provision of the 2014 FIP at 40 CFR 49.5513(j) were promulgated to satisfy the BART requirements of the CAA and the Regional Haze Rule and established emissions limitations for NO_x from NGS and associated requirements, including implementation schedules, reporting, monitoring, compliance determinations, recordkeeping, equipment operations, and enforcement.³⁴ Because NGS has permanently ceased operation, the emissions of NO_x regulated under the 2014 FIP have also permanently ceased. Therefore, the provisions of the 2014 FIP, which were intended to satisfy CAA requirements for visibility protection, are no longer necessary. In addition, the area surrounding NGS is designated attainment, unclassifiable/attainment, or unclassifiable for all NAAQS. Therefore, we propose to find that the provisions of the 2014 FIP are not needed to satisfy requirements concerning attainment or reasonable further progress or any other applicable CAA requirements.

III. Solicitation of Comments

As described above, the EPA is proposing the rescind the NGS FIP from 40 CFR 52.145(d) and 40 CFR 49.5513. The EPA solicits comments on this proposed FIP rescission and will accept comments until April 15, 2021.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review. This proposed rule applies to only one facility and is therefore not a rulemaking of general applicability.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not contain any information collection activities.

³⁴ 40 CFR 49.5513(j)(1) through (11).

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. The Navajo Generating Station is located on the reservation lands of the Navajo Nation, and the EPA recognizes there is significant community and tribal interest in this facility. The facility has already permanently ceased operations and this action simply proposes to rescind previously promulgated requirements applicable to this shuttered facility. In addition, the Navajo Nation EPA has already determined that NGS no longer has the right to operate. This proposed action to rescind the NGS FIP will not have substantial direct effects on any Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

Thus, Executive Order 13175 does not apply to this action. However, on January 7, 2021, we invited the Navajo Nation to consult on this proposed action.³⁵ The Navajo Nation did not request consultation on this proposed FIP rescission.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. The facility has already permanently ceased operations and this action simply proposes to rescind previously promulgated requirements applicable to this shuttered facility. Therefore, the EPA considers this proposed action to rescind the NGS FIP to have no impacts to human health and the environment, and to have no potential disproportionately high and adverse effects on minority, low-income, or indigenous populations.

List of Subjects

40 CFR Part 49

Administrative practice and procedure, Air pollution control, Environmental protection, Incorporation by reference, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Visibility.

³⁵ Letter dated January 7, 2021 from Elizabeth J. Adams, EPA Region IX, to Jonathan Nez, President of the Navajo Nation, Re: Invitation to Consult on a Request from the Salt River Project to Rescind the Federal Implementation Plan for the Navajo Generating Station.

Dated: February 22, 2021.

Deborah Jordan,

Acting Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend chapter I, title 40, of the Code of Federal Regulations as follows:

PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

- 1. The authority citation for part 49 continues to read as follows:

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

Subpart L—Implementation plans for tribes—Region IX

§ 49.5513 [Removed and Reserved]

- 2. Remove and reserve § 49.5513.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 3. The authority citation for part 52 continues to read as follows:

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

Subpart D—Arizona

§ 52.145 [Amended]

- 4. Amend § 52.145 by removing and reserving paragraph (d).

[FR Doc. 2021-04352 Filed 3-15-21; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2020-0713; FRL-10020-73-Region 6]

Air Plan Approval; Texas; Revisions to the Texas Diesel Emissions Reduction Incentive Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve a revision to the Texas State Implementation Plan (SIP) that pertains to the Texas Diesel Emissions Reduction Incentive Program, submitted on August 13, 2020.

DATES: Written comments must be received on or before April 15, 2021.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2020-0713, at <https://www.regulations.gov> or via email to

young.carl@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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 Carl Young, 214-665-6645, young.carl@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Carl Young, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-6645, young.carl@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov>, as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

Section 110 of the CAA requires states to develop and submit to the EPA a SIP to ensure that state air quality meets National Ambient Air Quality Standards (NAAQS). These ambient standards currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and

sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA approved SIP regulations and control strategies are federally enforceable.

An Economic Incentive Program (EIP) is a program that uses market-based strategies to reduce emissions of air pollutants.¹ The Texas Diesel Emissions Reduction Incentive Program (DERIP) for On-Road and Non-Road Vehicles is part of the Texas Emissions Reduction Program (TERP) that was established by the Texas Legislature in 2001 and approved in the Texas SIP as an economic incentive program (70 FR 48647, August 19, 2005). DERIP provides grants to eligible individuals, businesses, or local governments to reduce emissions from diesel-powered vehicles and equipment in areas designated as nonattainment for a NAAQS or other counties identified by the Texas Legislature.²

In 2019 the Texas Legislature revised the eligibility requirements for DERIP. As a result, the Texas Commission on Environmental Quality (TCEQ) revised the DERIP regulations found in Title 30, Chapter 114 (Control of Air Pollution from Motor Vehicles) of the Texas Administrative Code (30 TAC 114). The revisions were adopted on June 10, 2020 and submitted to the EPA as a SIP revision on August 13, 2020. Specifically, the TCEQ revisions: (1) Changed the minimum required usage for grant-funded vehicles and equipment in the eligible area from 75% to 55% (30 TAC 114.622), and (2) removed Victoria County from the list of counties eligible for DERIP grants (30 TAC 114.629). A copy of the SIP revision submitted to EPA is available in the electronic docket for this action.

II. The EPA’s Evaluation

We approved DERIP regulations into the Texas SIP in 2005 (70 FR 48647, August 19, 2005). More recently, we approved updates to DERIP regulations in 2018 (83 FR 50018, October 4, 2018). This SIP revision further updates DERIP regulations. The effect of this update is to: (1) Allow more diesel vehicles and equipment in nonattainment areas or

¹ For more information on EIPs see “Improving Air Quality with Economic Incentive Programs”, EPA-452/R-01-001, January 2001, available at <https://www.epa.gov/sites/production/files/2015-07/documents/eipfin.pdf>.

² For more information on TERP and DERIP please see “Texas Emissions Reduction Plan Biennial Report (2019–2020), Report to the 87th Texas Legislature, December 2020, SFR-079/20”. The document is available at: https://www.tceq.texas.gov/assets/public/comm_exec/pubs/sfr/079-20.pdf.