

**BILLING CODE 9110-04-C**

The temporary deviation is necessary to gather data on a possible permanent solution:

From 7 a.m. on May 26, 2022 through 7 p.m. on September 6, 2022 the US41 Bridge, mile 16.0, over the Kewanee Waterway, shall open on signal: Except that from 7 a.m. to 7 p.m. Monday through Friday, less federal holidays, the draw only need to be opened on the hour and half-hour for any vessel. Between midnight and 4 a.m. the draw shall be placed in the intermediate position and opened if a 2-hour advance notice is given. The bridge shall be opened on signal to pass any vessel over 300 feet in length or at any time 5 or more vessels gather at the bridge requesting an opening. All other provisions of 33 CFR 117.635 shall remain in effect.

The Coast Guard will also inform the users of the waterways through our Local Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

II. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the

outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2022-0237 in the search box and click "Search." Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

To view documents mentioned in this rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking

System of Records notice (85 FR 14226, March 11, 2020).

M.J. Johnston,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2022-10564 Filed 5-18-22; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2019-0215; FRL-8999-03-R5]

Air Plan Approval; Michigan; Partial Approval and Partial Disapproval for Infrastructure SIP Requirements for the 2015 Ozone NAAQS; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This action corrects an omission of timely comment and response in the September 28, 2021, Environmental Protection Agency (EPA) partial approval/partial disapproval of elements of a State Implementation Plan (SIP) submission from Michigan to address the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2015 ozone National Ambient Air Quality Standards (NAAQS). Accordingly, this action amends the effective date of the final approval to reflect EPA's current response to the previously omitted comment.

DATES: This final rule is effective on May 19, 2022.

FOR FURTHER INFORMATION CONTACT:

Olivia Davidson, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0266, davidson.olivia@epa.gov.

SUPPLEMENTARY INFORMATION: On July 2, 2021 (86 FR 35247), EPA proposed to approve most elements and disapprove an element of a SIP submission from the Michigan Department of Environment, Great Lakes, and Energy (EGLE) to address the required infrastructure elements of sections 110(a)(1) and (2), as applicable, for the 2015 ozone NAAQS. EPA provided an explanation of the CAA requirements, a detailed analysis of the submission, and EPA's reasons for proposing approval, in the notice of proposed rulemaking (NPRM) and will not be restated here. The public comment period for this proposed rule ended on August 2, 2021. In the final rule published in the **Federal Register** on September 28, 2021 (86 FR 53550), EPA mistakenly omitted comments submitted by Sierra Club in our response to comments. EPA received the comment letter on August 2, 2021 shortly before the end of the comment period. This comment letter submitted by Sierra Club is summarized below along with EPA's responses.

Comment: Sierra Club commented that EPA should examine whether Michigan has met the requirement of CAA sections 110(a)(2)(A) and 110(a)(2)(E)(i), 42 U.S.C. 7410(a)(2)(A) and 7410(a)(2)(E)(i), in light of a 2017 Michigan Court of Claims opinion, *United States Steel Corp. v. Dept. of Environmental Quality*, No. 16-000202-MZ, 2017 WL 5974195 (Mich. Ct. Cl. Oct. 4, 2017), that invalidated Michigan Administrative Code (MAC) 336.1430 ("Rule 430"). The commenter noted that Michigan promulgated Rule 430 in an effort to bring the Detroit area into attainment with the 2010 1-hour primary sulfur dioxide (SO₂) NAAQS, by placing SO₂ emission limits on a single facility. The commenter further noted that the Court invalidated Rule 430 because the limits applied to a single facility, thus failing the "general applicability" requirement of Michigan's Administrative Procedures Act, MCL 24.201 *et seq.* The implication of this comment is that Michigan lacks legal authority to regulate sources as necessary to implement the 2015 Ozone NAAQS, as required by CAA sections 110(a)(2)(A) and 110(a)(2)(E)(i).

Response: EPA disagrees with the commenter's concern that the Michigan

Court of Claims decision in *United States Steel Corp. v. Dept. of Environmental Quality*, indicates that Michigan lacks legal authority to regulate sources as required by CAA sections 110(a)(2)(A) and 110(a)(2)(E)(i). As an initial matter, EPA notes that the state court decision at issue pertained to implementation of the 2010 1-hour primary SO₂ NAAQS, not the 2015 Ozone NAAQS. For most purposes, EPA normally evaluates infrastructure SIP submissions for purposes of the specific NAAQS that is at issue. In this instance, however, the implications of the state court decision could potentially affect the state's ability to implement control measures with respect to other NAAQS as well.

In this light, EPA has evaluated whether the Michigan Court of Claims decision in question precludes the state from regulating specific sources as needed for purposes of meeting nonattainment plan requirements to result in attainment and maintenance of the NAAQS. Based on this review, EPA concludes that the court only decided that the state had improperly sought to impose emissions controls on the sources at issue through a rule that did not meet state law requirements for a "rule of general applicability" in violation of relevant state administrative procedures act requirements. By naming the specific affected source by name, rather than drafting the requirements in a form that would apply to all similar sources in the state, the court reasoned that the state law could not pass muster as a rule of general applicability.

Instead, the court reasoned that the objective the state sought to achieve "sounds more in the nature of that which is ordinarily only allowed after a contested case hearing or in the permit process." Moreover, the court noted that it was "not unmindful of the facts that led to the promulgation of Rule 430 or situation that DEQ sought to address." Although the court expressly declined to advise how the state could properly impose emission limits on the source at issue via other means, elsewhere in the decision the court noted that the state and other sources "agreed to revise pertinent DEQ permits."

EPA interprets these statements by the court to indicate that the state does have authority under Michigan law to impose necessary emission limitations on sources, as required to meet CAA requirements, via other legal mechanisms such as permits. EPA notes that in order to meet CAA SIP requirements, such as nonattainment plan requirements, the state would need to submit the emission limitations and other related permit terms (*e.g.*,

monitoring, reporting, and record keeping requirements) to EPA for approval into the federally enforceable SIP for Michigan.

In addition, to the extent that the state prefers to proceed via generally applicable state regulations rather than permits, EPA expects that Michigan will draft future rules to avoid the concerns raised by the court which resulted in invalid SO₂ limits and make necessary efforts to implement the 2015 Ozone NAAQS via other means consistent with state law and meeting CAA requirements for SIP provisions. Although the commenters expressed concern that the decision of the court in *United States Steel Corp. v. Dept. of Environmental Quality* indicated that the state lacks requisite authority to implement its SIP consistent with CAA requirements, EPA does not interpret the decision so broadly.

Additionally, EPA also disagrees with the commenter that Michigan's SIP does not include "enforceable emission limitations and other control measures . . . as may be necessary or appropriate to meet the applicable requirements" CAA section 110(a)(2)(A) with respect to the 2015 ozone NAAQS more broadly. As stated in the July 2, 2021 proposed rule (86 FR 35247), under Part 55 of the Natural Resources Protection Act, (PA 451) promulgated in 1994, Michigan Compiled Laws (MCL) Sections 324.5503 and 324.5512 authorize the EGLE director to regulate the discharge of air pollutants, to create rules and to establish standards regarding air quality and emissions. Specifically, MCL Section 324.5503 states "*The department may . . . Promulgate rules to establish standards for ambient air quality and for emissions . . . Issue permits . . . subject to enforceable emission limitations and standards and other conditions reasonably necessary to assure compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act.*" and MCL Section 324.5512 states "*(1) . . . department shall promulgate rules for purposes of doing all of the following: (a) Controlling or prohibiting air pollution. (b) Complying with the clean air act . . .*"

Michigan also imposes emission limits for ozone precursors in MAC Rules 336.1101 through 336.2908. Specifically, MAC Rules 336.1601 through 336.1661 apply to existing sources of volatile organic compounds (VOC), Rules 336.1701 through 336.1710 apply to new sources of VOCs, and Rules 336.1801 through 1834 apply to oxides of nitrogen (NO_x) from stationary sources. Methods of control

and compliance are contained within these rules and incorporate EPA's New Source Performance Review standards and NO_x budget trading program. Further, sources in Michigan that install equipment that will emit ozone precursors are subject to permit-to-install regulations under MAC Rules 336.1201 through 336.1209 and include consideration of VOCs and NO_x. Prevention of Significant Deterioration (PSD) program regulations (MAC Rules 336.2801 through Rule 336.2823) require any new major or modified source to undergo PSD review.¹ EPA believes the emission limits for ozone and its precursors contained in these rules, in conjunction with the authorization to promulgate rules to assure compliance with the CAA in MCL Sections 324.5503 and 324.5512, satisfy the requirements of CAA section 110(a)(2)(A) with respect to infrastructure SIP requirements for purposes of the 2015 ozone NAAQS.

Lastly, EPA reiterates that Michigan has provided necessary assurances that it has "adequate . . . authority under State . . . law to carry out the implementation plan . . . and is not prohibited by any Provision of Federal or State law, from carrying out such implementation plan." As EPA noted in the July 2, 2021, proposed rule (86 FR 35247), EGLE stated in the SIP submission that it has the legal authority to carry out the Michigan SIP under Act 451 and the Executive Reorganization Order 2011–1. In addition, EGLE indicated that MCL 324.5503 provides it with authority to enforce the Michigan SIP. Specifically, MCL 324.5503(f) gives EGLE the power to enforce permits, air quality fee requirements, and the requirements to obtain a permit, while 324.5503(g) gives EGLE the authority to institute proceedings to compel compliance. EGLE also provided a delegation letter in the submission from the Governor to the EGLE director that delegates authority to EGLE to ". . . make any submittal, request, or application under the federal CAA, including the ability to carry out SIP requirements." This letter is included in the docket of this ruling. Therefore, EPA believes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(A) and 110(a)(2)(E)(i) with respect to the 2015 Ozone NAAQS.

¹ Effective February 16, 2017 (82 FR 5182), EPA updated the modeling appendix at 40 CFR part 51, appendix W. EPA proposed approval of Michigan Part 9 rules on March 24, 2021 (86 FR 15837), incorporating the CFR update. The finalization of the rule update will dictate finalization of this element.

This action amends the regulatory text to correct the effective date of our final approval to reflect our response to these additional comments, in addition to correcting the CFR citation to reflect that EGLE's submission meets the requirements of Section 110(a)(2)(E)(i), which was detailed in the July 2, 2021, proposed approval (86 FR 35247), but mistakenly omitted in the CFR table.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this rule final without prior proposal and opportunity for comment because we are merely correcting incorrect element approval citations and incorrect effective date citations in the related previous actions to address mistakenly omitted comments.

Statutory and Executive Order Reviews

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 does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This action 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 governments, as specified by E.O. 13132 (64 FR 43255, August 10, 1999). 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 E.O. 13175 (65 FR 67249, November 9, 2000). This action is not subject to E.O. 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This action is also not subject to E.O. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The action also does not involve special consideration of environmental justice related issues as required by E.O. 12898 (59 FR 7629, February 16, 1994).

This action is subject to the Congressional Review Act (CRA), and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of May 19, 2022. This correction to 40 CFR part 52 for Michigan is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

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

Dated: May 12, 2022.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 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.*

- 2. In § 52.1170, the table in paragraph (e) is amended by revising the entry for "Section 110(a)(2) infrastructure requirements for the 2015 ozone NAAQS" to read as follows:

§ 52.1170 Identification of plan. (e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
Infrastructure				
Section 110(a)(2) infrastructure requirements for the 2015 ozone NAAQS.	Statewide	3/8/2019	5/19/2022, [INSERT Federal Register CITATION].	Approved CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(I) Prong 3, D(ii), (E)(i), (F), (G), (H), (J), (K), (L), and (M). Disapproved CAA element 110(a)(2)(D)(i)(II) Prong 4. No action on CAA element 110(a)(2)(D)(i)(I) and 110(1)(2)(E)(ii).

* * * * *
 [FR Doc. 2022-10671 Filed 5-18-22; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0106; FRL-9527-01-R9]

Air Plan Approval; Nevada; Clark County Department of Environment and Sustainability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Clark County Department of Environment and Sustainability (DES) portion of the Nevada State Implementation Plan (SIP). These revisions concern the title

change of the Clark County Department of Air Quality to the Department of Environment and Sustainability.

DATES: These rules will be effective on June 21, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2022-0106. 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, e.g., Confidential Business Information (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 through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. 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 FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947-4125 or by email at vineyard.christine@epa.gov.

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

Table of Contents

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Proposed Action

On February 22, 2022 (87 FR 9475), the EPA proposed to approve the following rules into the Nevada SIP.

Local agency	Rule No.	Rule title	Amended	Submitted
DES	Section 2	Procedures for Adoption and Revision of Regulations and for Inclusion of those Regulations in the State Implementation Plan.	1/21/20	3/16/20
DES	Section 33	Chlorine in Chemical Processes	1/21/20	3/16/20
DES	Section 41	Fugitive Dust	1/21/20	3/16/20
DES	Section 53	Oxygenated Gasoline Program	1/21/20	3/16/20
DES	Section 90	Fugitive Dust from Open Areas and Vacant Lots	1/21/20	3/16/20
DES	Section 93	Fugitive Dust from Paved Roads and Street Sweeping Equipment	1/21/20	3/16/20
DES	Section 94	Permitting and Dust Control for Construction Activities	1/21/20	3/16/20

We proposed to approve these rules because we determined that they comply with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period. During this period, we received no adverse

comments. We received one comment that did not object to the proposed action but expressed concerns about regional haze and air quality in Clark County. We do not consider the comment to be relevant to the specifics