EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA Approval date	**Federal Register** citation	Explanation
* * *	*	*	* *	*
May 2013 Regional Haze Progress Report	5/31/2013	8/25/2016	[Insert citation of publication].	Includes updated reasonable progress goals for North Carolina's Class I areas.

[FR Doc. 2016–20309 Filed 8–24–16; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2016–0169; FRL–9951–29–Region 5]

Air Plan Approval; Indiana; RACM Determination for Indiana Portion of the Cincinnati-Hamilton 1997 Annual $PM_{2.5}$ Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the reasonably available control measures (RACM) and reasonably available control technology (RACT) analysis that Indiana submitted as part of its attainment plan for the 1997 fine particulate matter ($PM_{2.5}$) standard, in accordance with Indiana's request dated February 11, 2016. The RACM/RACT analysis addresses RACM and RACT for the Indiana portion of the Cincinnati-Hamilton nonattainment area for the 1997 $PM_{2.5}$ standard. EPA is not acting on the portions of the State Implementation Plan (SIP) submission that are unrelated to RACM/RACT. Other portions of the attainment plan have either been addressed or will be addressed in future rulemaking actions.

DATES: This direct final rule will be effective October 24, 2016, unless EPA receives adverse comments by September 26, 2016. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0169 at *http://www.regulations.gov* or via email to *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: Joseph Ko, 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) 886–7947, *ko.joseph@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. Background

On July 18, 1997, EPA promulgated the first national ambient air quality standards (NAAQS) for $PM_{2.5}$. EPA promulgated an annual standard of 15 micrograms per cubic meter ($\mu g/m^3$) (based on a 3-year average of annual mean $PM_{2.5}$ concentrations) and a 24-hour standard of 65 $\mu g/m^3$ (based on a 3-year average of the 98th percentile of 24-hour concentrations). *See* 62 FR 38652. On December 17, 2004, based on 2001–2003 monitoring data, EPA designated the Cincinnati-Hamilton OH-KY-IN area (the Cincinnati-Hamilton area) as nonattainment for the annual standard for fine particles, and these designations became effective on April 5, 2005. *See* 70 FR 944. On July 3, 2008, Indiana requested that EPA redesignate as attainment its portion of the Cincinnati-Hamilton area, showing that existing permanent and enforceable controls would provide for timely attainment of the 1997 $PM_{2.5}$ standard by the attainment deadline of April 5, 2010. On September 29, 2011, based on 2007–2009 monitoring data, EPA made a ''clean data determination'' and determination of attainment, indicating that the entire area was attaining the 1997 $PM_{2.5}$ NAAQS by its applicable attainment date. *See* 76 FR 60373. The clean data determination suspended all further planning SIP revision requirements.

As part of its action approving the redesignation of the Indiana and Ohio portions of the Cincinnati-Hamilton area to attainment, published on December 23, 2011, EPA found that the states of Ohio and Indiana had satisfied the remaining applicable requirements, including the requirement to submit an emission inventory in accordance with section 172(c)(3). *See* 76 FR 80253. The redesignation to attainment was based, in part, on EPA's longstanding interpretation that Subpart 1 nonattainment planning requirements, including RACM, are not ''applicable'' for purposes of Clean Air Act section 107(d)(3)(E)(ii) and (v) when an area is attaining the NAAQS and, therefore, need not be approved into the SIP before EPA can redesignate the area. *See* 76 FR 80258.

On July 14, 2015, the United States Court of Appeals for the Sixth Circuit (Sixth Circuit) issued an opinion in *Sierra Club* v. *EPA,* 793 F.3d 656 (6th Cir. 2015), vacating EPA's redesignation of the Indiana and Ohio portions of the

Cincinnati-Hamilton area to attainment for the 1997 $PM_{2.5}$ NAAQS on the basis that EPA had not approved subpart 1 RACM for the area into the SIP.[1] The Court concluded that ''a State seeking redesignation 'shall provide for the implementation' of RACM/RACT, even if those measures are not strictly necessary to demonstrate attainment with the $PM_{2.5}$ NAAQS. . . . If a State has not done so, EPA cannot 'fully approve[]' the area's SIP, and redesignation to attainment status is improper.'' *Sierra Club,* 793 F.3d at 670.

EPA is adhering to the Court's precedent within the jurisdiction of the Sixth Circuit, which does not include Indiana. Regardless, on February 11, 2016, Indiana requested that EPA act on the RACM/RACT analysis for its portion of the Cincinnati-Hamilton area from the earlier attainment plan SIP revision in order to eliminate any potential concern regarding the effect of the Sixth Circuit decision.

II. What are EPA's actions?

EPA is approving Indiana's requested SIP submission as providing for all reasonably available control measures, including reasonably available control technology, in accordance with the requirements of sections 172(c)(1) and 189(a)(1)(C). More detail on EPA's rationale is provided below.

III. What is EPA's analysis of the State's RACM submittal?

a. Subpart 1 and Subpart 4 RACM Requirements

RACM is required under both Subpart 1 and Subpart 4 of Part D of Title I of the CAA. *See* CAA section 172(c)(1) and section 189(a)(1)(C). Section 172(c)(1) requires that each attainment plan ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from the existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the national primary ambient air quality standards.'' Similar language in section 189(a)(1)(C) requires RACM for $PM_{2.5}$ plans. EPA's current implementation guidance interprets RACM, including RACT, under section 172(c)(1) as measures that are both reasonably available and necessary to demonstrate attainment as expeditiously as practicable in the nonattainment area. *See* 40 CFR 51.1010(a).[2] A state must adopt, as RACM, measures that are reasonably available considering technical and economic feasibility if, considered collectively, they would advance the attainment date by one year or more. *See* 40 CFR 51.1010(b). EPA has also proposed implementation policy that applies a similar interpretation to RACM as required under section 189(a)(1)(C).

The $PM_{2.5}$ Implementation Rule (72 FR 20586) requires that the Subpart 1 RACM portion of the attainment plan SIP revision include the list of potential measures that a state considered and additional information sufficient to show that the state has met all requirements for the determination of what constitutes RACM in a specific nonattainment area. *See* 40 CFR 51.1010(a). Any measures that are necessary to meet these requirements that are not already either federally promulgated, part of the SIP, or otherwise creditable in SIPs must be submitted in enforceable form as part of a state's attainment plan SIP revision for the area. As discussed above, a clean data determination suspends the requirement for a $PM_{2.5}$ nonattainment area to submit an attainment plan SIP revision, including RACM, so long as the area continues to attain the $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1004(c).

b. RACM Based Upon Attainment of the NAAQS

EPA is approving the portion of Indiana's July 3, 2008, requested attainment plan SIP revision that addresses Subpart 1 RACM for the State's portion of the Cincinnati-Hamilton area on the basis that it is attaining the 1997 Annual $PM_{2.5}$ NAAQS and, therefore, no additional emission reduction measures beyond the existing measures in the SIP are necessary to demonstrate attainment or would advance the area's attainment by one year or more. As noted above, EPA determined that the area met the standard by the April 5, 2010 attainment date. *See* 76 FR 60373. Indiana's submission therefore meets the requirements of section 172(c)(1) pursuant to 40 CFR 51.1010. Given the similarity of requirements under Subpart 4, the submission also meets the RACT/RACM requirements of section 189(a)(1)(C).

c. RACM Based Upon the State's Control Evaluation

Additionally, the portion of Indiana's July 3, 2008 requested attainment plan SIP revision that addresses Subpart 1 RACM for the State's portion of the Cincinnati-Hamilton area is approvable on the basis that the requested SIP revision demonstrates that no additional reasonably available controls would have advanced the attainment date projected therein.

Indiana determined that existing measures and measures planned for implementation by 2009 would result in the Cincinnati-Hamilton area attaining the 1997 $PM_{2.5}$ NAAQS by the attainment deadline of April 5, 2010. Air quality modeling conducted by Lake Michigan Air Directors Consortium (LADCO) indicated that the area would attain the annual NAAQS in 2009 based upon projected emissions reductions from sources within the area after 2005 (the base year of the nonattainment emissions inventory). As discussed in Chapter 6.0 of the July 3, 2008 SIP submission, the State considered the following existing federally enforceable measures in projecting the emissions inventory used for the 2009 modeling: Tier 2 vehicle standards; heavy-duty gasoline and diesel highway vehicle standards; large non-road diesel engine standards; non-road spark-ignition engines and recreational engines standards; nitrogen oxides (NO_X) SIP call; and the Clean Air Interstate Rule (CAIR). Indiana adopted the NO_X SIP Call in 2001, and beginning in 2004, this rule accounted for a reduction of approximately 31% of total NO_X emissions in Indiana compared to previous uncontrolled years. Indiana adopted a state rule in response to CAIR in 2006 which included an annual and seasonal NO_X trading program, and an annual SO_2 trading program.

In addition to the federally enforceable measures mentioned above, Indiana also considered further Federal and statewide control measures that, once implemented, would further reduce emissions, but that were not included in the modeling demonstration. The Portable Fuel Container (Gas Can) Controls, and the Small Non-Road Engine Rules were considered as additional Federal controls that would reduce emissions. The Gas Can Controls Rule was issued on February 26, 2007 (71 FR 15830), and

[1] The Court issued its initial decision in the case on March 18, 2015, and subsequently issued an amended opinion on July 14 after appeals for rehearing en banc and panel rehearing had been filed. The amended opinion revised some of the legal aspects of the Court's analysis of the relevant statutory provisions (section 107(d)(3)(E)(ii) and section 172(c)(1)) but the overall holding of the opinion was unaltered. On March 28, 2016, the Supreme Court denied a petition for certiorari from Ohio requesting review of the Sixth Circuit's decision.

[2] Subpart 1 RACM requirements at 40 CFR 51.1010 were not at issue in the D.C. Circuit's remand of the $PM_{2.5}$ implementation rule in the January 2013 *Natural Resources Defense Council* v. *EPA* decision and are therefore not subject to the Court's remand. *Cf. NRDC* v. *EPA,* 571 F.3d 1245, 1252–53 (D.C. Cir. 2009) (upholding a substantially similar interpretation of Subpart 1 RACM in the context of ozone implementation regulations).

it was expected to significantly reduce volatile organic compounds (VOC) emissions. The Small Non-Road Engine Rule was proposed on April 17, 2007, and it was expected to result in a 70% reduction in hydrocarbon and NO_X emissions and a 20% reduction in carbon monoxide from new engines' exhaust, as well as a 70% reduction in evaporative emissions. The following Indiana statewide VOC controls rules were considered: Consumer and Commercial Products Rule (326 IAC 8), Architectural and Industrial Maintenance Coatings Rule (326 IAC 8–14), Automobile Refinishing Operations Rule (326 IAC 8–10), and Stage I Vapor Recovery Rule (326 IAC 8–4).

In Indiana's RACM analysis, which appears in chapter 7.0 of the July 3, 2008, SIP submission, the State discusses its evaluation of sources of $PM_{2.5}$ and its precursors within the Indiana portion of the Cincinnati-Hamilton area and its determination that these sources were meeting Subpart 1 RACM levels of emissions control. As discussed above, a state must show that all Subpart 1 RACM (including RACT for stationary sources) necessary to demonstrate attainment as expeditiously as practicable have been adopted and must consider the cumulative impact of implementing available measures to determine whether a particular emission reduction measure or set of measures is required to be adopted as RACM. Potential measures that are reasonably available considering technical and economic feasibility must be adopted as RACM if, considered collectively, they would advance the attainment date by one year or more.

Based on the emissions inventory and other information, the State identified the categories of sources that should be evaluated for controls. These categories include permitted stationary sources; gasoline dispensing facilities; on-road mobile sources; non-road and stationary internal combustion engines; open burning; and home heating with wood.

Indiana, in conjunction with LADCO, conducted attainment test modeling that showed that the Indiana portion of the Cincinnati-Hamilton area would attain the current annual $PM_{2.5}$ NAAQS by 2009, one year before the attainment date deadline of 2010. Indiana evaluated candidate control measures for feasibility, cost effectiveness, and the ability to implement them in the set time frame. No additional measures were needed to demonstrate attainment in an expeditious fashion, since the conducted attainment test modeling showed that the area would attain the fine particles NAAQS by 2009. Indiana's attainment demonstration was validated by quality assured monitoring data at the end of 2009. Therefore, EPA is approving the existing measures as meeting the requirements of RACM/RACT. *See* 72 FR 20586.

In addition to Indiana's modeling demonstration of expeditious attainment and confirmatory monitoring data, the primary source for both direct $PM_{2.5}$ and its precursor emissions for Indiana's portion of the Cincinnati-Hamilton area (Tanners Creek power plant owned by American Electric Power) was permanently retired on June 1, 2015. As a result of its retirement, direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions in the Indiana portion of the area have decreased significantly, further improving air quality, above and beyond what Indiana demonstrated as necessary to maintain attainment.

EPA has reviewed the State's RACM/RACT analysis and discussion in Indiana's attainment plan SIP revision, and agrees with the State's conclusion that no other reasonably available measures were available or necessary to attain or advance attainment of the standard.

IV. What action is EPA taking?

EPA is approving the RACM/RACT portion of Indiana's Cincinnati-Hamilton area attainment plan SIP revision as providing adequate RACM/RACT consistent with the provisions of 40 CFR 51.1010(b), because Indiana has demonstrated that no further control measures would advance the attainment date in the area.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective October 24, 2016 without further notice unless we receive relevant adverse written comments by September 26, 2016. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective October 24, 2016.

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);
- 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).

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. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 2016. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 9, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

40 CFR part 52 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.*

■ 2. Section 52.776 is amended by adding paragraph (y) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(y) Approval-By submittal dated July 3, 2008, Indiana demonstrated satisfaction of the requirements for reasonably available control measures for its portion of the Cincinnati-Hamilton OH-KY-IN area.

[FR Doc. 2016–20312 Filed 8–24–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R02–OAR–2016–0088; FRL–9951–24–Region 2]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Virgin Islands; Sewage Sludge Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve the Clean Air Act (CAA) section 111(d)/129 negative declaration for the Government of the United States Virgin Islands, for existing sewage sludge incinerator (SSI) units. This negative declaration certifies that existing SSI units subject to sections 111(d) and 129 of the CAA do not exist within the jurisdiction of United States Virgin Islands. The EPA is accepting the negative declaration in accordance with the requirements of the CAA.

DATES: This direct final rule will be effective October 24, 2016, without further notice, unless the EPA receives adverse comment by September 26, 2016. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–OAR–016–0088), to *http://www.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, 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: Edward J. Linky, Environmental Protection Agency, Air Programs Branch, 290 Broadway, New York, New York 10007–1866 at 212–637–3764 or by email at *Linky.Edward@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to the EPA. This section provides additional information by addressing the following:

I. Background

The Clean Air Act (CAA) requires that state [1] regulatory agencies implement the emission guidelines and compliance times using a state plan developed under sections 111(d) and 129 of the CAA.

The general provisions for the submittal and approval of state plans are codified in 40 CFR part 60, subpart B and 40 CFR part 62, subpart A. Section 111(d) establishes general requirements and procedures on state plan submittals for the control of designated pollutants.

Section 129 requires emission guidelines to be promulgated for all categories of solid waste incineration units, including SSI units. Section 129 mandates that all plan requirements be at least as protective and restrictive as the promulgated emission guidelines. This includes fixed final compliance dates, fixed compliance schedules, and Title V permitting requirements for all affected sources. Section 129 also requires that state plans be submitted to

[1] Section 302(d) of the CAA includes the Virgin Islands in the definition of the term ''State.''