

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R02-OAR-2021-0871; FRL 11226-01-R2]

Air Plan Approval; New Jersey; Redesignation of the Warren County 1971 Sulfur Dioxide Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a November 15, 2021, redesignation request and State Implementation Plan (SIP) revision submitted by the State of New Jersey. The New Jersey Department of Environmental Protection (NJDEP) is requesting that EPA redesignate the New Jersey portion of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (Warren County, New Jersey) from nonattainment to attainment for the 1971 sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). In conjunction with its redesignation request, New Jersey submitted a limited maintenance plan and its associated contingency measures for the Warren County Nonattainment Area to ensure that attainment of SO₂ NAAQS will continue to be maintained. EPA is proposing to approve the request for redesignation and the maintenance plan based on EPA's determination that the Warren County Nonattainment Area has met the redesignation requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 13, 2023.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R02-OAR-2021-0871 at <https://www.regulations.gov>. 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 electronically through <https://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 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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

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SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” means EPA.

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I. Background*1971 SO₂ NAAQS*

The 1971 SO₂ NAAQS consisted of two primary standards for the protection of public health and one secondary standard for the protection of public welfare. The primary SO₂ NAAQS addressed the 24-hour and annual averages of ambient SO₂ concentrations. The secondary standard addressed the 3-hour average of ambient SO₂ concentrations. The level of the annual SO₂ standard was 0.03 parts per million (ppm) (or 80 micrograms per cubic meter (µg/m³)) not to be exceeded in a calendar year.¹ The level of the 24-hour standard was 0.14 ppm (or 365 µg/m³), not to be exceeded more than once per calendar year.² The level of the secondary SO₂ standard is a 3-hour standard of 0.5 ppm (or 1300 µg/m³), not to be exceeded more than once per calendar year.³

¹ See 40 CFR 50.4(a).

² See 40 CFR 50.4(b).

³ See 40 CFR 50.5(a).

The EPA subsequently finalized a revised, more stringent, SO₂ primary NAAQS that included a shorter 1-hour averaging period on June 2, 2010.⁴ The 2010 SO₂ primary standard was set at a level of 75 parts per billion (ppb) (or 196.4 µg/m³) based on the 3-year average of the annual 99th percentile of daily maximum 1-hour average SO₂ concentrations.⁵ The EPA provided that the 24-hour and annual standards were to be revoked for all areas one year after their individual designations under the 2010 primary NAAQS, except for areas previously designated nonattainment that did not have an approved SIP for the new 1-hour standard.⁶ The 3-hour secondary NAAQS remains in effect. The EPA designated⁷ all of New Jersey, including Warren County, for the new primary, one hour 75 ppb 2010 SO₂ NAAQS as attainment/unclassifiable on December 21, 2017.

1971 SO₂ Nonattainment Designation

The EPA initially designated all of Warren County, New Jersey which is part of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (AQCR), as “better than national standards” (otherwise known as “attainment”) for the 1971 primary and secondary SO₂ NAAQS on March 3, 1978.⁸ On April 30 and June 26, 1986, the NJDEP submitted a request to EPA to revise the air quality designation for parts of Warren County from “attainment” to “nonattainment” with respect to the 1971 primary and secondary SO₂ NAAQS. On December 31, 1987,⁹ the EPA redesignated portions of Warren County as nonattainment for both the primary and secondary 1971 SO₂ NAAQS at the request of the State of New Jersey (the State) to revise the air quality designation for the area. The Warren County Nonattainment Area (NAA) included the entire Townships of Harmony, Oxford, White, and Belvidere, and portions of Liberty and Mansfield Townships for nonattainment redesignation.¹⁰ The remaining portion of Warren County remained designated as attainment. The EPA issued a correction on March 14, 1988,¹¹ which

⁴ See 75 FR 35520, June 22, 2010.

⁵ See 40 CFR 50.17(a)-(b).

⁶ See 40 CFR 50.4(e).

⁷ See 83 FR 1098, January 9, 2018.

⁸ See 43 FR 8962, March 3, 1978.

⁹ See 52 FR 49408, December 31, 1987.

¹⁰ See 52 FR at 49411, December 31, 1987; 53 FR 8182, March 14, 1988; and 40 CFR 81.331.

¹¹ See 53 FR 8182, March 14, 1988.

clarified the extent of the SO₂ NAA in the Liberty and Mansfield Townships.¹²

The EPA revised the designations for those parts of Warren County to “does not meet standards” (otherwise known as “nonattainment”). The EPA’s revision was based on the State’s request under CAA section 107 and EPA’s own assessment of air dispersion screening modeling performed by the NJDEP and others,¹³ which showed portions of Warren County were in violation of the SO₂ NAAQS. The boundaries of the NAA were based on the results of New Jersey’s air dispersion screening model analysis to determine the impact from the Martins Creek Generating Station (*i.e.*, Martins Creek), located in Northampton, Pennsylvania (PA) and other nearby sources, to elevated terrain in Warren County out to 14 kilometers (km) from Martins Creek. New Jersey modeled eight existing major sources at the time in the AQCR using worst-case meteorology in the air dispersion screening model analysis.

The Pennsylvania sources included in the modeling had emission rates that far surpassed those of the New Jersey facilities, with emissions from the Martins Creek and Portland Generating Station in Northampton, PA (*i.e.*, Portland), being the highest. The modeling predicted that the highest concentrations would occur in the elevated terrain located 3 to 8 km east-southeast of the Martins Creek facility, and that these concentrations would be primarily attributable to emissions from Martins Creek and Portland. In contrast, the modeling showed relatively low contributions from New Jersey sources in Warren County, NJ, to the highest annual, second highest 24-hour, and second highest 3-hour concentrations compared to the emissions from Martins Creek and Portland, often by one or more orders of magnitude.

The designated NAA included impacted areas in New Jersey only as determined by the air dispersion screening modeling and did not include the areas in Pennsylvania where the

large contributing sources were located, such as the Martins Creek and Portland facilities.

Further information regarding the analysis performed for the Warren County nonattainment designation can be found in the Warren County 1971 SO₂ Designation TSD, which is included in the docket of this rulemaking.

June 1999 Air Dispersion Modeling Analysis

In June 1999, a detailed air dispersion modeling analysis (the 1999 study) was performed to further evaluate the impact of Martins Creek, Portland, and other sources in the Warren County NAA. Emissions modeling from Martins Creek, Portland, as well as sources located in the Warren County NAA (*e.g.*, Roche Vitamins/DSM Nutritional (formerly Hoffman LaRoche), and the Warren County Resource Recovery Facility (WCRRF)) were included in the 1999 study. New Jersey included the 1999 study in its November 15, 2021, Redesignation Request and Maintenance Plan SIP submission.¹⁴

Martins Creek modeled sources included two large Coal-Fired Units (Units 1 and 2) and two large No. 6 Oil-Fired Units (Units 3 and 4), as well as several No. 2 Oil-Fired smaller sources that operated infrequently (*e.g.*, an auxiliary boiler to start up Units 3 and 4), and four combustion turbines used for peaking purposes only. Portland modeled sources included two large Coal-Fired Units (Units 1 and 2), and three combustion turbines that were permitted for natural gas and No. 2 Oil (Units 3, 4, and 5). The Roche Vitamins/DSM Nutritional modeled sources included four No. 2 Oil-Fired boilers, and the WCRRF sources included two waste-to-energy combustion/steam generation units. The 1999 study showed that for the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS attainment could be assured with only slight reductions in allowable emissions¹⁵ from the Martins Creek combustion turbines and Coal-Fired Units. Emissions from Martins Creek and Portland were 1 to 2 orders of magnitude larger than the sources located in the Warren County NAA. The 1999 study also showed that contributions from the Martins Creek Units dominated, whereas contributions from the New Jersey sources (*i.e.*, Roche

Vitamins/DSM Nutritional, and WCRRF) were minimal.

The initial modeling of Martins Creek’s combustion turbines and Coal-Fired Units 1 and 2¹⁶ showed predicted concentrations exceeding the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS with fuel oil of 0.5% sulfur content and at their emission limit of 4.0 lb/MMBtu, respectively. Revised rates of 0.1% sulfur content for the turbines and 3.9 lb/MMBtu for the Coal-Fired Units were used in the final modeling.

After the modeling was redone at the reduced fuel concentrations emission rates and as described above, the predicted highest 3-hour concentration from all sources plus background was 1298 µg/m³, below the 3-hour NAAQS of 1300 µg/m³. The maximum annual concentration was 71 µg/m³, less than the annual NAAQS of 80 µg/m³. The highest 24-hour concentration was 334 µg/m³, below the 24-hour NAAQS of 365 µg/m³.

Martins Creek Coal-Fired Units 1 and 2 were the dominant source contributions for the 3-hour and 24-hour concentrations. Combined, Units 1 and 2 contributed 865 µg/m³ of a 1298 µg/m³ total for the 3-hour concentration and 205 µg/m³ of a 334 µg/m³ total for the 24-hour concentration.

Overall, Martins Creek units were responsible for over 99% of contributions to the 3-hour concentrations, and over 93% of contributions to the 24-hour concentrations. Portland source contributions were lower at approximately 2.5% of contributions to the 24-hour concentrations, and no contributions to the 3-hour concentrations. The New Jersey Warren County Area sources (Roche Vitamins/DSM Nutritional, and WCRRF) contributed less than 0.01% combined to both the 3-hour and 24-hour concentrations.

The main contributor for the annual concentration was the Martins Creek Auxiliary Boiler,¹⁷ contributing 45 µg/m³ of a 71 µg/m³ total. Martins Creek Units 1 and 2 were the next highest contributor at 6.1 µg/m³ combined. Overall, Martins Creek Units were responsible for over 76% of contributions to the annual concentration. Portland source contributions were lower at

¹² The NAA included the portion of Liberty Township south of the Universal Transverse Mercator Grid System (UTM) coordinate N4522 and west of UTM coordinate E505, and the portion of Mansfield Township west of UTM coordinate E505. See 53 FR 8182, March 14, 1988.

¹³ The modeling studies evaluated by the EPA included New Jersey modeling analyses using the Valley Screening Model for multiple sources in the area, as well as modeling of the Martins Creek Generating Station emissions using the Industrial Source Complex I and Maximum Permissible Ambient Concentration Gaussian Plume Model with Terrain Adjustment (MPTER) models. Multisource modeling supporting the permit application for the Warren County Resource Recovery Facility was also submitted and evaluated.

¹⁴ See Appendix 8 Martins Creek Modeling Report 1999.

¹⁵ Martins Creek was modeled at approximately 32,000 pounds per hour and Portland was modeled at approximately 15,000 pounds per hour. Roche Vitamins/DSM Nutritional and Warren County RRF were each modeled at approximately 40 pounds per hour.

¹⁶ Martins Creek Coal-Fired Units 1 and 2 are no longer capable of operating (*i.e.*, shut down and dismantled).

¹⁷ The annual average and contribution from auxiliary boiler were likely much lower since the boiler only operated on start-up conditions and would not operate a significant number of hours over an entire year. Since the 1999 study, the auxiliary boiler modeled has been shut down.

approximately 5% of contributions to the annual concentration. Roche Vitamins/DSM Nutritional and the WCRRF contributed less than 0.5% combined to the total for the annual concentration.

Emissions Reductions at the Pennsylvania and New Jersey Sources

Martins Creek and Portland facilities have had significant decreases in allowable emissions resulting from unit shutdowns, more stringent operating limits, and a stringent SIP approved Sulfur in Fuels regulation,¹⁸ since the designations and later 1999 study.

The permitted allowable emissions for Martins Creek and Portland, and the New Jersey sources included in the 1999 study are shown below in Table 1 for 1987, 2000, and 2018. The table shows that total allowable emissions from these sources have dropped significantly since the designations, dropping by over 80%, from 1987 to 2018.

TABLE 1—ALLOWABLE SULFUR DIOXIDE EMISSIONS ¹⁹

Facility	1987	2000	2018
Martins Creek:			
Units 1 and 2	14,520 lb/hr	14,520 lb/hr	Shutdown.
Units 3 and 4	17,600 lb/hr	17,600 lb/hr	8,800 lb/hr.
Auxiliary Boiler 4	168.2 lb/hr	168.2 lb/hr	Shutdown.
Four Combustion Turbines (each)	145.2 lb/hr	36.3 lb/hr	5.9 lb/hr.
Portland Units 1 and 2	14,652 lb/hr	14,652 lb/hr	Shutdown.
Roche Vitamins/DSM Nutritional	710 lb/hr	37.6 lb/hr	1.5 lb/hr.
WCRRF	39.7 lb/hr	39.7 lb/hr	39.7 lb/hr.
Lower Mount Bethel Energy ²⁰	Not yet built	Not yet built	5.4 lb/hr.
Total	48,280 lb/hr (211,467 TPY)	47,163 lb/hr (205,507 TPY)	8,852 lb/hr (38,750 TPY).

Significant changes at Martins Creek, many of which have led to large emission reductions as shown in Table 1, include the following:

- Martins Creek Coal-Fired Units 1 and 2 were permanently shut down in September 2007 and dismantled one year later. The boiler building and emissions stack were subsequently demolished.
- Martins Creek No. 6 Oil-Fired Units 3 and 4 are currently limited to burning No. 6 oil at no more than 0.5% sulfur, to comply with the 25 Pa. Code Chapter 123, section 123.22, even though these equipment’s emissions were modeled at a sulfur content of 1% in the 1999 study. The Units were previously limited to 0.7% sulfur in September 2007. Allowable SO₂ emissions from Martins Creek Units 3 and 4 are limited to 8,800 pounds per hour as shown for 2018, in Table 1 (reduced from 17,600 pounds per hour since 2000).
- The auxiliary boiler at Martins Creek has been shut down since November 2014, after initially converting to natural gas in September 2007.
- Martins Creek combustion turbines, which were modeled based on burning No. 2 oil at 0.1% sulfur, are currently permitted to use only natural gas. Allowable SO₂ emissions

from Martins Creek combustion turbines is currently limited to approximately 6 pounds per hour each as shown for 2018, in Table 1.

The shutdown of Martins Creek Coal-Fired Units 1 and 2,²¹ and the limiting of Units 3 and 4 to 0.7% sulfur and limiting of the auxiliary boiler to firing natural gas were included in an October 2003 Settlement Agreement between NJDEP, the Pennsylvania Department of Environmental Protection (PADEP) and Lower Mount Bethel Energy.²² The settlement agreement stipulations for Martins Creek were incorporated into the Martins Creek Title V operating permit. Significant changes at Portland, many of which have also led to large emission reductions, include the following:

- Portland Coal-Fired Units were shut down in June 2013 (Unit 2), and May 2014 (Unit 1), to comply with a May 2013 Consent Decree filed in the U.S. District Court for the Eastern District of PA.²³
- Portland’s Units 1 and 2 were also subject to interim and final limits established by the EPA in a final rule issued on November 7, 2011, in response to a petition filed by New Jersey under Section 126 of the CAA (126 petition).²⁴ New Jersey filed its 126 petition requesting that the EPA

make a finding that emissions from Portland contributed significantly to nonattainment and/or interference with maintenance of the revised, more stringent 2010 1-hour SO₂ NAAQS in New Jersey.

- Portland combustion turbines, which were modeled in 1999 based on burning No. 2 oil at 0.1% sulfur, are limited to 0.05% sulfur under 25 PA Code Chapter 123.22.

Although Roche Vitamins/DSM Nutritional and the WCRRF had a minimal contribution as demonstrated by the 1999 study (*i.e.*, they contributed less than 0.01% combined to both the 3-hour and 24-hour concentrations and less than 0.5% combined to the total for the annual concentration), both facilities have had decreases in allowable emissions.

- All fuel use at Roche Vitamins/DSM Nutritional was removed from its operating permit in 2014. Two of the four boilers were removed from its permit by 2019. The other two boilers were converted to natural gas by 2019.
- The two WCRRF waste combustors were disconnected and were rendered inoperable by a permit modification in February 2020.

Actual emission from Martins Creek and Portland as well as the New Jersey

¹⁸ 25 Pa. Code Chapter 123, section 123.22, Standards for Contaminants/Sulfur Compound Emission/Combustion units.

¹⁹ From Table 2: Allowable Sulfur Dioxide Emissions of New Jersey’s November 15, 2021, Redesignation Request and SIP submission.

²⁰ Lower Mount Bethel Energy is a 650 MW natural gas-powered facility that began operation in

2004. The facility is located adjacent to the Martins Creek facility and is listed as a source of interest (but has minimal allowable SO₂ emissions as shown in Table 1).

²¹ The agreement initially limited Units 1 and 2 to 3.3 lb/MMBtu by May 2004.

²² See Appendix 2 of New Jersey’s November 15, 2021, Redesignation Request and Maintenance Plan SIP submittal.

²³ See Civil Action No. 07–CV–5298 (JKG); and Appendix 5 of New Jersey’s November 15, 2021, Redesignation Request and Maintenance Plan SIP submittal.

²⁴ 76 FR 69052 (November 7, 2011).

sources have also declined substantially as shown in Table 2.

Martins Creek, which in 1990 emitted over 33,200 tons per year (TPY) of SO₂, was emitting an average of 49 TPY of

SO₂ from 2018 to 2020. Portland, which in 1990 emitted 25,400 TPY of SO₂, averaged less than 0.5 TPY²⁵ of SO₂ from 2018 to 2020. Total SO₂ emissions from both Roche Vitamins/DSM

Nutritional and the WCRRF are less than 5 TPY. In 2020, there were no other sources within the Warren County Nonattainment Area emitting above 1 TPY of SO₂.²⁶

TABLE 2—ACTUAL SULFUR DIOXIDE EMISSIONS²⁷

Facility	1990	2000	2010	2015–2017 ²⁸	2018–2020 ²⁹
Martins Creek:					
Units 1 and 2	25,637 TPY	18,775 TPY	Shutdown	Shutdown	Shutdown.
Units 3 and 4	7,656 TPY	6,925 TPY	508 TPY	106 TPY	49 TPY.
Auxiliary Boiler 4	NA	0	Shutdown	Shutdown	Shutdown.
Four Combustion Turbines (each)	NA	0	Shutdown	Shutdown	Shutdown.
Portland Units 1 and 2	25,428 TPY	20,295 TPY	22,072 TPY	Shutdown	Shutdown.
Roche Vitamins/DSM Nutritional	No data	16.1 TPY	0.2 TPY	1.8 TPY	1.7 TPY.
WCRRF	No data	4.8 TPY	11 TPY	12 TPY	2.9 TPY.
Lower Mount Bethel Energy ³⁰	Not yet built	Not yet built	6.3 TPY	9 TPY	6.2 TPY.
Total	58,721 TPY	52,100 TPY	22,597 TPY	129 TPY	59.8 TPY.

SO₂ Attainment SIP and Determination of Attainment

New Jersey was required to submit an attainment SIP to the EPA by May 15, 1992, *i.e.*, within 18 months of November 15, 1990. The Warren County NAA was required to attain the SO₂ NAAQS within five years after November 15, 1990. Therefore, the Warren County SO₂ NAA’s attainment date was November 15, 1995.

The NJDEP submitted a request on August 17, 2018, for the EPA to make a determination that the Warren County SO₂ NAA had attained the 1971 primary and secondary SO₂ NAAQS.³¹ On May 20, 2019 (84 FR 22768) the EPA proposed to make the determination that the Warren County NAA attained the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS.

On July 23, 2019, NJDEP submitted a supplement to the Warren County SO₂ Clean Data Request to provide clarification that New Jersey has met its obligation to satisfy Nonattainment New Source Review (NNSR) and the Emission Inventory (EI) SIP requirements for the 1971 SO₂ NAAQS through previous SIP submittals to the EPA on February 19, 1993,³² (for NNSR) and June 11, 2015 (for EI).³³

On August 21, 2019,³⁴ the EPA determined that the Warren County NAA attained the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS. This determination (informally known as a

Clean Data Determination or CDD) was based on air quality monitoring data, air quality dispersion modeling information, and other supporting information. The determination suspended the requirement for the State to submit a reasonable further progress plan, attainment demonstration, contingency measures and any other plan elements relating to attainment of the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS for as long as the area continues to meet each NAAQS.

II. Requirements for Redesignation Requests and Limited Maintenance Plans

The CAA provides the requirements for redesignating a NAA to attainment. Specifically, CAA section 107(d)(3)(E) allows for redesignation of a NAA provided that: (1) the Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under CAA Part D and section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as

meeting the requirements of CAA section 175A; and (5) the state containing such area has met all requirements applicable to the area for purposes of redesignation under CAA section 110 and Part D.

CAA section 175A requires states to submit a SIP revision which provides for maintenance of the NAAQS for at least 10 years after redesignation, including any additional control measures as may be necessary to ensure such maintenance. In addition, maintenance plans are to contain such contingency provisions as we deem necessary to assure the prompt correction of a violation of the NAAQS that occurs after redesignation.

The EPA considers the core provisions of the maintenance plan to include: an Attainment Emissions Inventory; a Maintenance Demonstration; a Monitoring Network; a Verification of Continued Attainment; and a Contingency Plan. The EPA’s primary guidance on maintenance plans and redesignation requests is a September 4, 1992, memo from John Calcagni, entitled “Procedures for Processing Requests to Redesignate Areas to Attainment” (*i.e.*, Calcagni Memo).³⁵

The EPA has also provided states seeking redesignation with the option of submitting a Limited Maintenance Plan (LMP), rather than a full maintenance plan, where design values are at or

²⁵ Data from Clean Air Markets Division (CAMD).
²⁶ 2020 New Jersey Emission Statement.

²⁷ From Table 3: Actual Sulfur Dioxide Emissions of New Jersey’s November 15, 2021, Redesignation Request and SIP submission. Note: The 2018 to 2020 data column, which was not included in New Jersey submission, has been added by EPA from data obtained from CAMD and New Jersey Emission Statements.

²⁸ Average of emissions from 2015 to 2017.

²⁹ Average emissions from 2018 to 2020.

³⁰ Lower Mount Bethel Energy is a 650 MW natural gas-powered facility that began operation in 2004. The facility is located adjacent to the Martins Creek facility and is listed as a source of interest (but has minimal SO₂ emissions as shown in Table 1).

³¹ See Warren County SO₂ Clean Data Request.

³² See EPA approval at 61 FR 38591 (July 25, 1996).

³³ See EPA approval at 82 FR 44099 (September 21, 2017).

³⁴ See 84 FR 43504, August 21, 2019.

³⁵ EPA’s “Procedures for Processing Requests to Redesignate Areas to Attainment” can be found at <https://www.epa.gov/ground-level-ozone-pollution/procedures-processing-requests-redesignate-areas-attainment>.

below 85% of the NAAQS.³⁶ The EPA has developed guidance memoranda on LMP options that are specific to ozone, particulate matter, and the carbon monoxide NAAQS.³⁷ Consistent with the EPA's policy for LMP's presented in those guidance documents, the EPA believes that the LMP option is justifiable and appropriate in the case for the 1971 SO₂ NAAQS. In an LMP, the Maintenance Demonstration is considered satisfied if the design values meet the air quality criteria of 85%. Moreover, there is no requirement to project emissions over the maintenance period in the state's plan.

III. Evaluation of New Jersey's Redesignation Request and Limited Maintenance Plan

On November 15, 2021, New Jersey submitted to the EPA a request for redesignation of the Warren County 1971 SO₂ NAA to attainment and a SIP revision containing a maintenance plan for the area. New Jersey opted to develop a LMP instead of a full maintenance based on the State's demonstration that the air quality was below 85% of the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS.

The EPA's evaluation of New Jersey's redesignation request and LMP was based on consideration of the five redesignation criteria provided under CAA section 107(d)(3)(E).

Criteria (1)—The Warren County SO₂ Nonattainment Area Has Attained the 1971 SO₂ NAAQS

For redesignating an NAA to attainment, the CAA requires the EPA to determine that the area has attained the applicable NAAQS.³⁸ The two primary methods for evaluating whether an NAA has attained the 1971 SO₂ NAAQS are air dispersion modeling and air quality monitoring.

In accordance with CAA section 107(d)(3)(E)(i), the EPA determined that the Warren County NAA attained the 3-

hour, 24-hour, and annual 1971 SO₂ NAAQS in an earlier action.³⁹

The EPA's CDD was based on air quality dispersion modeling (*i.e.*, 1999 study), and the subsequent large SO₂ emissions reductions that occurred from the primary contributing sources since the modeling was performed, as the primary basis to conclude that the area was attaining the 1971 SO₂ NAAQS.

The EPA also considered other information, which added additional support to conclude that the area has attained the 1971 SO₂ NAAQS. The additional information considered by the EPA included SO₂ emissions trends and control measures within Warren County; ambient air quality data from the Columbia, NJ (AQS ID 34-041-0007); Chester, NJ (AQS ID 34-027-3001); and Easton, PA (AQS ID 42-095-8000) air monitoring sites; and ambient air quality data from a Warren County Air Monitoring Project Special Study.⁴⁰ The EPA also considered a New Jersey analysis to estimate SO₂ concentrations in the Warren County NAA based on the interpolation of data from the Columbia, NJ, Chester, NJ, and Easton, PA, air monitoring sites.⁴¹

The Columbia, NJ monitor is the nearest monitor to the Warren County NAA in Knowlton Township, in Warren County, New Jersey and is approximately 5 km north of the northern border of the NAA. The site was added to New Jersey's Ambient Air Monitoring Network, in September 2010, well after the 1971 SO₂ nonattainment designation, to measure the impact of major point sources, primarily Portland, located on the Pennsylvania side of the Delaware River. The site is approximately 10 km northeast of Martins Creek (and less than 2 km northeast of Portland).

The Chester, NJ monitoring site is in Chester township in Morris County, New Jersey. The site is located approximately 20 km east of the eastern border of the Warren County NAA. The site is approximately 35 km east of Martins Creek.

The Easton, PA monitoring site was in Northampton County, Pennsylvania, approximately 5 km southwest of the southern border of the Warren County NAA. This site was approximately 15 km southwest of Martins Creek.

The EPA considered the air monitoring data (2011 to 2017) from the Columbia, NJ, Chester, NJ, and Easton, PA, air monitoring sites to support our conclusion that the Warren County NAA was attaining the 3-hour, 24-hour, and annual 1971 sulfur dioxide NAAQS. The design values were all well below the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS. The data was collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS).⁴² However, the air monitoring data was considered supporting information,⁴³ and not the primary basis for the CDD. The CDD's primary basis was air quality dispersion modeling, and the subsequent large SO₂ emissions reductions that occurred from the primary contributing sources. For the EPA to have concluded that the Warren County NAA had attained the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS through air monitoring data alone, the EPA would have needed information that supported a showing that one or more of the monitors was in the area of maximum ambient SO₂ concentration.

The Columbia, NJ, Chester, NJ, and Easton, PA, monitors were all located outside of the Warren County NAA, and not in the location of maximum impact based on previous modeling for the 1971 SO₂ NAAQS.

The EPA also noted in the TSD for the CDD that the previously identified maximum impact area had also likely changed resulting from the very large emissions reductions that have occurred, since the 1987 designation, from the primary contributing sources and from within Warren County, as discussed above. As previously mentioned, Martins Creek, which in 1990 emitted over 33,200 tons of SO₂ per year, was emitting an average of 49 TPY of SO₂ from 2018 to 2020. Portland, which in 1990 emitted approximately 25,400 TPY of SO₂, averaged less than 0.5 TPY⁴⁴ of SO₂ from 2018 to 2020. Previous modeling, in addition to showing significant impacts from the large power plant emissions at the time, also showed that the smaller sources in the area caused minimal impacts. These results suggested that the sources remaining in this area were not causing significant gradients in concentrations.

³⁶ Per EPA guidance, the design values for the nonattainment areas should continue to be at or below 85% of the NAAQS until the time of final EPA action on the redesignation.

³⁷ See "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas" from Sally L. Shaver, Office of Air Quality Planning and Standards, dated November 16, 1994; "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, Office of Air Quality Planning and Standards, dated October 6, 1995; "Limited Maintenance Plan Option for Moderate PM₁₀ Nonattainment Areas" from Lydia Wegman, Office of Air Quality Planning and Standards, dated August 9, 2001; and "Guidance on the Limited Maintenance Plan Option for Moderate PM_{2.5} Nonattainment Areas and PM_{2.5} Maintenance Areas", dated October 2022.

³⁸ See CAA section 107(d)(3)(E)(i).

³⁹ See 84 FR 43504, August 21, 2019.

⁴⁰ Air monitoring at site locations within the nonattainment area (*i.e.*, Belvidere High School, Demeter Farm on Scott's Mountain, and Warren County Municipal Building) were part of a special study (*i.e.*, Warren County Air Monitoring Project or WCAMP) that was conducted from November 1, 2002, to October 31, 2005. In the three-year study period, SO₂ ambient concentrations were well below the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS.

⁴¹ Further information regarding the analysis performed for EPA's CDD can be found in the CDD Technical Support Document (TSD) for EPA's Proposed Rulemaking for the Determination of Attainment for the 1971 Sulfur Dioxide National Ambient Air Quality Standard; Warren County NAA, which is in the docket for this rulemaking.

⁴² <https://www.epa.gov/aqs>.

⁴³ See CDD TSD at 13-17.

⁴⁴ Data from Clean Air Markets Division (CAMD).

Due to the absence of significant sources in the area, the EPA concluded that the monitoring data from Columbia, NJ, Chester, NJ, and Easton, PA, may have been indicative of recent air quality throughout the Warren County NAA.

The EPA also indicated in the CDD TSD that updated EPA modeling performed in support of EPA’s November 7, 2011, final rule⁴⁵ addressing the CAA 126 petition filed by New Jersey showed the Columbia, NJ monitor to be in the area of maximum concentration for Portland facility emissions and nearby background sources for the 2010 1-Hour SO₂ NAAQS. As noted earlier in Section I., Background, the EPA finalized a revised, more stringent SO₂ primary NAAQS that included a shorter 1-hour averaging period on June 2, 2010. In the CDD TSD, EPA indicated that we believed that analyses addressing the more stringent, newer, standard were useful in evaluating air quality with respect to the older 1971 standards, including whether the Columbia monitoring site, in the vicinity of the Warren County NAA, was located in the area of maximum concentration for the SO₂ emissions mix at the time of the 126 petition in 2011. In granting New Jersey’s 126 petition,⁴⁶ EPA concluded that the numerous exceedances of the 1-hour SO₂ NAAQS recorded at the

Columbia site since monitoring began in September 2010 were attributable to large SO₂ emissions from Portland. The EPA’s conclusion was based on the review of wind trajectory analysis that showed NAAQS exceedances when prevailing winds in the area came from the direction of Portland, and review of continuous emissions monitoring (CEMs) data for Portland. Between September 23, 2010, and June 31, 2011, the Columbia monitor measured exceedances of the 1-hour SO₂ NAAQS on 29 days. After Portland Units 1 and 2 reduced emissions to comply with the 126 petition’s limits, and were shut down during 2013 and 2014, the 1-hour SO₂ design values at Columbia showed significant decline and were below the 1-hour SO₂ NAAQS by 2014. The EPA further concluded in the CDD TSD, that the air quality monitoring data from the Columbia monitor provided additional support that current air quality in the area is meeting the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS. The EPA based its conclusions in the CDD TSD on based on the revised SO₂ emissions mix in the area, the close proximity of the monitor to the Portland facility and the Warren County NAA, and the monitor’s response to the impact from Portland emissions.

In its November 2021 redesignation request and maintenance plan submittal

to the EPA, New Jersey included recent 2015 to 2019 SO₂ design values for air monitoring sites in Columbia, NJ, Chester, NJ and Freemansburg, PA (AQS ID 42–095–0025). New Jersey noted in its submittal that the Easton, PA air monitoring site was shut down and replaced by the Freemansburg, PA monitor, which began operating in 2018. The Freemansburg, PA monitor is in Northampton County, PA, approximately 25 km southwest of Martins Creek, and approximately 17 km southwest of the southern border of the Warren County NAA. The Freemansburg, PA monitor is approximately 10 km further away from Martins Creek and the Warren County NAA than the Easton, PA monitor, which it replaced, and may be similarly indicative of recent air quality due to the absence of significant sources in the area.

Table 3 shows recent SO₂ design values from 2015 to 2021 from monitoring sites in Columbia, NJ, Chester, NJ, Easton, PA, and Freemansburg, PA, monitoring sites. The EPA added 2020 and 2021 design values, which were not included in New Jersey’s November 2021 submission, because they are more recent certified air monitoring design values available from EPA’s AQS.^{47 48}

TABLE 3—SULFUR DIOXIDE MONITORING DESIGN VALUES

Site	2015 (PPM)	2016 (PPM)	2017 (PPM)	2018 (PPM)	2019 (PPM)	2020 (PPM)	2021 (PPM)
Columbia, NJ, AQS ID 34–041–0007:							
3-hour	0.004	0.006	0.003	0.005	0.004	0.004	0.008
24-hour	0.002	0.002	0.002	0.004	0.002	0.002	0.003
Annual	0.000	0.000	0.000	0.001	0.000	0.000	0.000
Chester, NJ, AQS ID 34–027–3001:							
3-hour	0.005	0.004	0.002	0.003	0.003	0.003	0.004
24-hour	0.003	0.002	0.001	0.002	0.001	0.002	0.001
Annual	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Freemansburg, PA, ⁴⁸ AQS ID 42–095–0025:							
3-hour .....	.....	.....	.....	0.004	0.004	0.005	0.005
24-hour .....	.....	.....	.....	0.001	0.002	0.002	0.002
Annual .....	.....	.....	.....	0.000	0.000	0.000	0.000
Easton, PA, AQS ID 42–095–8000:							
3-hour	0.012	0.012	0.106	.....	.....	.....	.....
24-hour	0.007	0.005	0.059	.....	.....	.....	.....
Annual	0.001	0.001	0.001	.....	.....	.....	.....

As Table 3 shows, that when considering the additional available air monitoring data collected since the EPA’s previous CDD,⁴⁹ there were no monitored violations of the 3-hour, 24-hour, and annual 1971 NAAQS of 0.5

ppm, 0.140 ppm and 0.030 ppm, respectively. The design values continue to be well below 3-hour, 24-hour, and annual 1971 SO₂ NAAQS. As will be further discussed later in this action as part of EPA’s evaluation of

New Jersey’s LMP, the design values of 0.43 ppm, 0.119 ppm, and 0.026 ppm for the 3-hour, 24-hour, and annual 1971 NAAQS, respectively, are also well below the air quality criteria of 85% for an LMP.

⁴⁵ See 76 FR 69052 (November 7, 2011).

⁴⁶ Pursuant to 126(c), the EPA established a remedy (*i.e.*, emission limits and compliance

schedule for Portland Coal-Fired Units 1 and 2), to bring the plant into compliance.

⁴⁷ <https://www.epa.gov/aqs>.

⁴⁸ The Freemansburg, PA monitor replaced the Easton, PA monitor in 2018.

⁴⁹ 84 FR 43504, August 21, 2019.

The EPA's review of the recent air monitoring data from the Columbia, NJ, Chester, NJ, Easton, PA, and Freemansburg, PA, monitoring sites supports the previous determination that the Warren County NAA has attained the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS.

Criteria (2)—New Jersey Has a Fully Approved SIP Under 110(k); Criteria (5)—New Jersey Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

For redesignating a nonattainment area to attainment under a NAAQS, CAA section 110 and part D of title I require EPA to determine that the state has met all applicable requirements for that NAAQS (CAA section 107(d)(3)(E)(v)). Additionally, under CAA section 110(k) EPA must determine that the state has a fully approved SIP for that NAAQS for the area.⁵⁰

As further discussed in this section, the EPA proposes to find that New Jersey has met all applicable SIP requirements for the Warren County SO₂ NAA under CAA section 110 (general SIP requirements) for purposes of redesignation. Additionally, the EPA proposes to find that the New Jersey SIP satisfies the criterion that it meets applicable SIP requirements for purposes of redesignation under CAA title I part D in accordance with section 107(d)(3)(E)(v). Further, the EPA proposes to determine that the SIP is fully approvable with respect to all requirements applicable to the 1971 SO₂ NAAQS for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these determinations, the EPA ascertained which requirements are applicable to the Warren County SO₂ NAA and, if applicable, that they are fully approved under CAA section 110(k).

A. The Warren County SO₂ NAA Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

General SIP Requirements

General SIP elements and requirements are delineated in CAA section 110(a)(2) of title I, part A. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the

implementation of CAA part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of CAA part D requirements (New Source Review (NSR)) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development. Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, the EPA has required certain states to establish programs to address the interstate transport of air pollutants.

The section 110(a)(2)(D) requirements for a state are not linked with a particular NAA's designation and classification in that state. In reviewing a redesignation request, the EPA believes that the requirements linked with a particular NAA's designation and classifications are the relevant measures to evaluate. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, the EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, the EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with the EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements.⁵¹

Title I, Part D. Applicable SIP Requirements

CAA section 172(c) sets forth the basic requirements of attainment plans

for NAAs that are required to submit them pursuant to section 172(b). Subpart 5 of part D, including CAA section 191 and 192, establishes requirements for SO₂, nitrogen dioxide and lead NAAs.⁵²

Section 172(c)(1) requires the plans for all NAAs to provide for the implementation of all Reasonably Available Control Measures (RACM) as expeditiously as practicable and to provide for attainment of the NAAQS. The EPA interprets this requirement to impose a duty on all NAAs to consider all available control measures and to adopt and implement such measures as are "reasonably available" for implementation in each area as components of the area's attainment demonstration. Under section 172, states with NAAs must submit plans providing for timely attainment and meeting a variety of other requirements.

The EPA's longstanding interpretation of the nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not "applicable" for purposes of CAA section 107(d)(3)(E)(ii). Therefore, such requirements do not need to be approved in the SIP before the EPA can redesignate the area. In the 1992 General Preamble for Implementation of Title I, the EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard.⁵³ The EPA noted that the requirements for Reasonable Further Progress (RFP) and other measures designed to provide for attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements "have no meaning" for an area that has already attained the standard.⁵⁴ This interpretation was also set forth in the Calcagni Memo. The EPA's understanding of section 172 also forms the basis of its Clean Data Policy (CDP). The CDP applies to SO₂ in the EPA's SO₂ NAA Guidance for the 2010 1-hour SO₂ NAAQS,⁵⁵ and the CDP suspends a state's obligation to submit most of the attainment planning requirements that would otherwise apply. The CDP also suspends the attainment demonstration and planning SIPs to provide for RFP,

⁵² See the General Preamble for Implementation of Title I (57 FR 13498) for a thorough discussion of the requirements contained in section 172(c).

⁵³ See 57 FR 13498, 13564 (April 16, 1992).

⁵⁴ *Id.*

⁵⁵ EPA's Guidance for 1-Hour Sulfur Dioxide (SO₂) Nonattainment Area State Implementation Plans (SIP) Submissions can be found at <https://www.epa.gov/so2-pollution/guidance-1-hour-sulfur-dioxide-so2-nonattainment-area-state-implementation-plans-sip>.

⁵⁰ See CAA § 107(d)(3)(E)(ii).

⁵¹ See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996); (62 FR 24826, May 7, 2008); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

RACM, and contingency measures under section 172(c)(9). Courts have upheld the EPA's interpretation of section 172(c)(1) for RACM and control technology as meaning only those controls that advance attainment, precluding the need to require additional measures where an area is already attaining.⁵⁶

Therefore, because attainment has been reached in the Warren County SO₂ NAA, no additional measures are needed to provide for attainment. Moreover, CAA section 172(c)(1) requirements for an attainment demonstration and RACM are not part of the "applicable implementation plan" required to have been approved prior to redesignation per CAA section 107(d)(3)(E)(ii). The other section 172 requirements that are designed to help an area achieve attainment—specifically, the section 172(c)(2) requirement that nonattainment plans contain provisions promoting reasonable further progress, the requirement to submit the section 172(c)(9) contingency measures, and the section 172(c)(6) requirement for the SIP to contain control measures necessary to provide for attainment of the NAAQS—are also not required to be approved as part of the "applicable implementation plan" for purposes of satisfying CAA section 107(d)(3)(E)(ii).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions.

New Jersey had met its obligation to satisfy the EI SIP requirements for the 1971 SO₂ NAAQS through a previous SIP submittal to the EPA on June 11, 2015. As mentioned earlier in Section I., Background, NJDEP submitted a supplement on July 23, 2019, to the Warren County SO₂ Clean Data Request providing clarification that New Jersey has met its obligation to satisfy the EI SIP requirements for the 1971 SO₂ NAAQS through that previous SIP submittal to the EPA. The EPA approved the June 11, 2015, submission on September 21, 2017.⁵⁷ The EPA approved inventory included annual SO₂ emissions from the general source categories of point, area, on-road, and nonroad sources for Warren County, NJ in 2011.

As part of the maintenance plan submitted by New Jersey on November

15, 2021, the State submitted an updated attainment year inventory based on the 2017 calendar year. The EPA's evaluation of the 2017 emissions inventory for New Jersey's maintenance plan is discussed below in the EPA's evaluation of New Jersey's LMP.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, whereas CAA section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the NAA.

New Jersey made a SIP submission to satisfy the NNSR SIP requirements for the 1971 SO₂ NAAQS through a previous SIP submittal to the EPA, dated February 19, 1993, which covered all nonattainment pollutants. As mentioned above, NJDEP submitted a supplement, on July 23, 2019, to its Warren County SO₂ Clean Data Request to provide clarification that New Jersey has met its obligation to satisfy NNSR SIP requirements for the 1971 SO₂ NAAQS through that previous SIP submittal to the EPA.

In EPA's action⁵⁸ on the February 19, 1993, submittal, the EPA provided a limited approval of New Jersey's NSR Program. The EPA had determined that New Jersey's NSR regulation, Subchapter 18, "Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules)," lacked certain elements⁵⁹ requiring correction before the regulation could be fully approved. The EPA finalized a limited approval because it strengthened the existing New Jersey SIP by incorporating CAA requirements, including new offset ratios, and new applicability thresholds.

Although New Jersey's NSR Program was not fully approved, the EPA has a longstanding interpretation that NNSR is replaced by PSD upon redesignation. Therefore, NAAs seeking redesignation to attainment need not have a fully approved part D NNSR program to be redesignated.⁶⁰ New Jersey does not have its own promulgated regulations as part of the SIP for part C PSD rules. New Jersey is appropriately implementing the PSD program through the delegated federal PSD regulations at 40 CFR 52.21.

⁵⁶ See *EPA approval at 61 FR 38591* (July 25, 1996).

⁵⁹ For a list of deficiencies, see *61 FR 38592* (July 25, 1996).

⁶⁰ See memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment" for a more detailed rationale for the described view.

The program will become effective in the Warren County SO₂ NAA upon redesignation to attainment.

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached in the Warren County NAA, no additional control measures are needed.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As previously noted, the EPA believes the New Jersey SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with federal conformity regulations relating to consultation, enforcement, and enforceability that the EPA promulgated pursuant to its authority under the CAA.

The EPA interprets the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because, like the other requirements listed above, state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved.⁶¹

For these reasons, the EPA proposes to find that New Jersey has satisfied all the applicable requirements for redesignation of the Warren County SO₂ NAA under section 110 and part D of title I of the CAA.

B. The Warren County SO₂ NAA Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

The EPA has fully approved the applicable New Jersey SIP for the Warren County SO₂ NAA under CAA section 110(k) for all applicable redesignation requirements. As previously indicated, the EPA believes that the section 110 elements that are

⁶¹ See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); see also *60 FR 62748* (December 7, 1995) (redesignation of Tampa, Florida).

⁵⁶ See *NRDC v. EPA*, 571 F.3d 1245, 1252 (D.C. Cir. 2009); *Sierra Club v. EPA*, 294 F.3d 155, 162 (D.C. Cir. 2002); *Sierra Club v. EPA*, 314 F.3d 735, 744 (5th Cir. 2002); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004); but see *Sierra Club v. EPA*, 793 F.3d 656 (6th Cir. 2015).

⁵⁷ See EPA approval at *82 FR 44099* (September 21, 2017).

neither connected with nonattainment plan submissions nor linked to an area's nonattainment status are not applicable requirements for purposes of redesignation. The EPA has approved all part D requirements applicable under the 1971 SO₂ NAAQS, as identified above, for purposes of this redesignation.

Criteria (3)—The Air Quality Improvement in the Warren County SO₂ NAA Is Due to Permanent and Enforceable Reductions in Emissions

For redesignating a nonattainment area to attainment, the CAA requires the EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable federal air pollution control regulations, and other permanent and enforceable reductions.⁶² The EPA proposes to find that the air quality improvement in the Warren County SO₂ NAA is due to permanent and enforceable reductions in emissions.

Martins Creek, and to a lesser extent Portland, which are in Northampton County, PA, have been identified as the primary cause of SO₂ NAAQS violations in the Warren County NAA as determined by previous modeling. New Jersey's redesignation submission identifies the significant reductions in allowable SO₂ emissions, that have occurred since the 1987 designation, from Martins Creek and Portland, as well as the smaller New Jersey sources located in the Warren County SO₂ NAA.

Martins Creek Coal-Fired Units 1 and 2 have been permanently shut down (since September 2007) and were dismantled one year later. The EPA considers the shutdown of the two Coal-Fired Units at Martins Creek to be both permanent and enforceable due to the units' dismantling. The EPA notes that the boiler building and stack that vent the sulfur dioxide emissions from Units 1 and 2 have been demolished, and physically removed from the site, making future operation of Units 1 and 2 impossible. Thus, the emissions reductions from the units that were primarily responsible for nonattainment are permanent.

Additionally, Pennsylvania's Sulfur in Fuels regulation, 25 Pa. Code Chapter 123, section 123.22, is deemed

permanent and enforceable because of EPA's approval⁶³ of this provision into Pennsylvania's SIP. After July 1, 2016, all sources in Pennsylvania are limited to using fuel with the following sulfur content: the sulfur content of No. 2 oil or lighter must be 0.05% or less; and the sulfur content of No. 5, 6, or heavier oil must be 0.5% or less. Pennsylvania's regulation applies statewide and, had it been in effect at the time of the 1999 study, would have reduced the impact of the Martins Creek auxiliary boiler and combustion turbines, which were modeled in the 1999 study based on burning No. 2 oil at 0.1 percent sulfur, and of the Martins Creek No. 6 Oil-Fired Units 3 and 4, which were modeled at a sulfur content of 1%. Similarly, Portland's combustion turbines would have had a reduced impact due to Pennsylvania's Sulfur in Fuels regulation since they were also modeled at 0.1% sulfur in the 1999 study.

The EPA notes that the required shutdown of Martins Creek Coal-Fired Units 1 and 2,⁶⁴ and the limiting of Units 3 and 4 to 0.7% sulfur and limiting of the auxiliary boiler to firing natural gas were included in the October 2003 Settlement Agreement between NJDEP, PADEP, and Lower Mount Bethel Energy. Martins Creek joined in the settlement and was subject to the terms and conditions. The terms and conditions were legally binding to all parties.

The May 2013 Consent Decree, filed by NRG Energy (the owner of Portland), New Jersey, and Connecticut in the U.S. District Court for the Eastern District of PA,⁶⁵ required the permanent shutdown of Portland Coal-Fired Units 1 and 2 by June 1, 2014. The Consent Decree established permanent and enforceable requirements for the shutdown of Units 1 and 2. Prior to their shutdown, the Units 1 and 2 were subject to interim and final limits established by the EPA in a final rule issued on November 7, 2011, in response to a petition filed by New Jersey under Section 126 of the CAA.⁶⁶

New Jersey's Sulfur in Fuels regulation, N.J.A.C.7:27–9, is permanent and enforceable because of EPA's approval of this provision into New Jersey's SIP.⁶⁷ After July 1, 2016, New Jersey's rule has limited No. 2 oil and lighter fuel in the State to no more than 0.0015 percent sulfur content.

Additionally, No. 4 fuel oil is limited to 0.25% sulfur, and No. 6 oil cannot be more than 0.5% sulfur in Warren County, NJ. Although the New Jersey sources in Warren County (*i.e.*, Roche Vitamins/DSM Nutritional and the WCRRF) minimally contributed as shown by the 1999 study, New Jersey's regulation would have further reduced the impact from the Roche Vitamins/DSM Nutritional combustion turbines, which were modeled in the 1999 study based on burning No. 2 oil at 0.05% sulfur.

A review of the 1999 study, the permanent and enforceable reductions from shutdown and dismantling of the Martins Creek Coal-Fired Units, and 25 PA Code Chapter 123.22 is sufficient to conclude that the 1971 SO₂ NAAQS would have and will continue to be attained by a far greater margin than previously determined by the 1999 study. The 1999 study showed that for the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS attainment could be assured with only slight reductions in allowable emissions from the Martins Creek Coal-Fired Units (*i.e.*, after reducing the emission rate 4.0 lb/MMBtu to 3.9 lb/MMBtu), and combustion turbines (after reducing the emission rate based on a No. 2 fuel oil sulfur content of 0.1%, rather than 0.5%). As discussed previously, Martins Creek Coal-Fired Units 1 and 2 are no longer capable of operating (*i.e.*, they were shut down and dismantled). Pennsylvania has since limited the burning of No. 2 at no more than 0.05% sulfur, under 25 PA Code Chapter 123.22, and that requirement has been incorporated⁶⁸ into Pennsylvania's SIP.

The 1999 study also showed that Martins Creek Units 1 and 2 contributed 865 µg/m³ of a 1298 µg/m³ total for the 3-hour SO₂ impacts and 205 µg/m³ of a 334 µg/m³ total for the 24-hour SO₂ impacts. For the annual SO₂ impacts, Martins Creek Units 1 and 2 contributed 6.2 µg/m³ of a 71 µg/m³ total. Table 4 shows the cumulative SO₂ impacts from all sources to be well below the 3-hour, 24-hour, and annual NAAQS after subtraction of the impacts from the Martins Creek Units 1 and 2 due to their shutdown and dismantling. The EPA also considered more recent background data⁶⁹ from the Columbia, NJ monitor from 2015 to 2017.

⁶² See CAA section 107(d)(3)(E)(iii).

⁶³ 79 FR 39330 (July 10, 2014).

⁶⁴ The agreement initially limited Units 1 and 2 to 3.3 lb/MMBtu.

⁶⁵ See Appendix 5 of New Jersey's November 15, 2021, Redesignation Request and Maintenance Plan SIP submittal; Civil Action No. 07–CV–5298 (JG).

⁶⁶ 76 FR 69052 (November 7, 2011).

⁶⁷ EPA approval at 77 FR 19 (January 3, 2012).

⁶⁸ 79 FR 39330 (July 10, 2014).

⁶⁹ The updated background data was obtained from Table 5 from New Jersey's November 15, 2021, Redesignation Request and SIP submission.

TABLE 4—1999 STUDY MODELING RESULTS WITH MARTINS CREEK UNITS 1 AND 2 REMOVED

Facility	3-hour	24-hour	Annual
Martins Creek:			
Units 1 and 2	Removed	Removed	Removed.
Unit 3	220.0 µg/m ³	53.1 µg/m ³	1.1 µg/m ³ .
Unit 4	201.0 µg/m ³	53.1 µg/m ³	0.7 µg/m ³ .
Auxiliary Boiler 4	1.8 µg/m ³	NA ⁷⁰	45.0 µg/m ³ .
Combustion Turbines	0.0 µg/m ³	8.2 µg/m ³	1.5 µg/m ³ .
Portland	0.0 µg/m ³	0.0 µg/m ³	3.7 µg/m ³ .
Roche Vitamins/DSM Nutritional ...	0.0 µg/m ³	0.0 µg/m ³	0.2 µg/m ³ .
WCRRF	0.0 µg/m ³	0.0 µg/m ³	0.04 µg/m ³ .
Background ⁷¹	15.3 µg/m ³	5.4 µg/m ³	1.3 µg/m ³ .
Total Concentration	438.1 µg/m ³	119.8 µg/m ³	53.5 µg/m ³ .

The total SO₂ impact from all sources (after the subtraction of the impacts from the Martins Creek Units 1 and 2) would be approximately 438 µg/m³ (3-hour), 120 µg/m³ (24-hour), and 54 µg/m³ (annual), which are less than the respective NAAQS of 1300 µg/m³ (0.5ppm), 365 µg/m³ (0.140 ppm) and 80 µg/m³ (0.030 ppm). The values are also well below the respective air quality criteria for the 3-hour, 24-hour, and annual NAAQS of 85% for an LMP, of 1105 µg/m³ (or 0.43 ppm), 310 µg/m³ (or 0.119 ppm), and 68 µg/m³ (or 0.026 ppm).

The EPA notes that New Jersey also calculated 2018 predicted impacts based on 2018 and 2000, allowable emission ratios⁷² and the more recent background data from the Columbia, NJ monitor from 2015 to 2017. New Jersey's analysis predicts even further reduced impacts since the 1999 study due to allowable emission reductions from the previously described October 2003 Settlement Agreement; May 2013 Consent Decree; Pennsylvania and New Jersey SIP-approved Sulfur in Fuels regulations; and updates to Title V Operating Permits.

The EPA believes that there is sufficient information to conclude that actual permanent and enforceable emission reductions, including the shutdown and dismantling of the Martins Creek Coal-Fired Units, and SIP-approved Sulfur in Fuels rules in Pennsylvania and New Jersey, are responsible for air quality improvement. Therefore, the EPA is proposing to find that the air quality improvement in the Warren County SO₂ NAA is due to permanent and enforceable reductions in emissions.

⁷⁰ Not Available/Reported.

⁷¹ Background data from Table 5 of NJ's Submittal.

⁷² To predict the air concentrations in 2018, the ratio of the 2018 and 2000 allowable emissions are multiplied by the 1999 modeling predicted impacts.

Criteria (4)—The Warren County SO₂ Nonattainment Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A

New Jersey submitted a LMP for the Warren County SO₂ NAA required by the CAA. Our evaluation of the Warren County LMP is presented below.

A. Does the Warren County Nonattainment Area qualify for the limited maintenance plan option?

The submission of an LMP, rather than a full maintenance plan, is an available option for states provided design values for the area are at or below 85% of the NAAQS. For the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS, 85% of the NAAQS is equivalent to 1105 µg/m³ (or 0.43 ppm), 310 µg/m³ (or 0.119 ppm), and 68 µg/m³ (or 0.026 ppm), respectively. Under the LMP option, there is no requirement to project emissions over the maintenance period in the state's plan since there is a low probability of violating the standard in the future.

To determine that the Warren County NAA is suitable for an LMP, the EPA reviewed updated air quality modeling and air monitoring from the nearby air monitors at Columbia, NJ, Chester, NJ, and Easton/Freemansburg, PA, for 2017 to 2021. In the November 2021 redesignation request and maintenance plan submittal to the EPA, New Jersey provided SO₂ design values for each of the most recent 5-years at the time (*i.e.*, 2015 to 2019). The EPA also considered design values from 2020 and 2021 as the more recent design values were subsequently available from AQS since the New Jersey submittal.

The EPA relied primarily on the air quality modeling, rather than air monitoring, for the determination. This is because as previously noted, the air monitors were all located outside of the Warren County NAA and were not in the location of maximum impact based on previous modeling for the 1971 SO₂

NAAQS. As noted above, the EPA believes that the air monitoring data from Columbia, NJ, Chester, NJ, and Easton/Freemansburg, PA, may have been indicative of recent air quality throughout the Warren County NAA. This interpretation is based on previous air modeling, which showed minimal impact from the smaller sources in the area. Additionally, in the EPA's evaluation of New Jersey's 126 petition for the 1-hour SO₂ NAAQS, the EPA concluded that the numerous exceedances of the 2010 1-hour SO₂ NAAQS recorded at the Columbia site were attributable to large SO₂ emissions from Portland. The EPA's conclusion was based on the review of wind trajectory analysis that showed NAAQS exceedances when prevailing winds in the area came from the direction of Portland, and review of CEMs data for Portland.

As shown previously in Table 3 and Table 4, the 85% criteria for the LMP option have been met by a wide margin both by monitoring, and modeling. For the monitoring the design values from Columbia, NJ, Chester, NJ, and Easton/Freemansburg, PA, from 2015 to 2021 were well below the air quality criteria of 85% for an LMP. In the EPA review of modeling results from the 1999 study, after the subtraction of the impacts from the Martins Creek Units 1 and 2 alone, the total SO₂ impact from all sources were also well below the respective air quality criteria of 85% for an LMP.

These modeling and monitoring values are below the 85% threshold. Therefore, the Warren County NAA is suitable for the LMP option.

B. Elements of a Limited Maintenance Plan for SO₂

The EPA considers the core provisions of the maintenance plan to include: an Attainment Emissions Inventory; a Maintenance Demonstration; a Monitoring Network; a Verification of Continued Attainment; and a Contingency Plan. Under the LMP

option, the Maintenance Demonstration is considered satisfied if the design values meet the air quality criteria of 85%, and there is no requirement to project emissions over the maintenance period in the state’s plan.

As discussed more fully in this section, the EPA proposes to find that New Jersey includes all the necessary components in their submitted maintenance plan and is thus proposed as a revision to the New Jersey SIP.

1. Attainment Emissions Inventory

A state’s plan should include an emissions inventory to identify the level of emissions that is sufficient to attain and maintain the NAAQS. The inventory should represent emissions

during the same time associated with the modeling, or the air quality data, that demonstrate attainment of the standard, and the applicability requirements for the LMP (*i.e.*, design values are at, or below, 85% of the 1971 SO₂ NAAQS).

New Jersey selected 2017 as the attainment year for the Warren County NAA. New Jersey’s submitted attainment year inventory included annual SO₂ emissions from the general source categories of point, area, on-road, and nonroad sources for Warren County, NJ for 2017. The emissions data was obtained from the EPA’s 2017 National Emissions Inventory (NEI).

The 2017 inventory is consistent with the updated SO₂ modeled impacts from

the 1999 study and the air quality data, which were used to demonstrate attainment and LMP applicability requirements.

The New Jersey emissions data reflects total SO₂ emissions for Warren County, rather than the specific townships within Warren County that were included in the Warren County NAA. New Jersey included historic emissions data since 1990, to show the declining trend in emissions since shortly after the designation in December 1987. SO₂ emissions decreased in Warren County by approximately 96% from 1990 to 2017 and about 92% from 2002 to 2017.

TABLE 5—WARREN COUNTY SO₂ EMISSIONS

	Emissions (tons per year)				
	1990	2002	2007	2011	2017
Point	376	101	75	52	26
Area	832	345	330	259	13
Onroad Mobile	247	134	16	16	14
Nonroad Mobile	41	63	25	3	1
Total SO₂	1,496	643	446	330	54

New Jersey provided a revision to the total SO₂ emissions and area source category for Warren County for 2017, in a technical correction submitted to the EPA on March 30, 2023. The total SO₂ emissions change was small (*i.e.*, 5 tons). Table 5 includes the updated emissions provide by the State.

New Jersey also provided the 2015 to 2017 SO₂ emissions data for Martins Creek and Portland, in Pennsylvania, and for Roche Vitamins/DSM Nutritional and WCRRF, in the Warren County NAA. New Jersey also included historical emissions for those facilities since 1990. The emissions are shown in Table 2, in Section I., Background. As previously noted, Martins Creek, which in 1990 emitted over 33,200 TPY of SO₂, permanently shut down its coal-fired boilers by September 2007, and dismantled the Units one year later. The remaining oil-fired boilers are currently emitting an average of 49 TPY of SO₂. Portland, which in 1990 emitted 25,400 TPY of SO₂, shut down its Coal-Fired Units by May 2014, and is currently emitting less than 0.5 TPY of SO₂. The total SO₂ emissions from both Roche Vitamins/DSM Nutritional and the WCRRF are less than 5 TPY. In 2020, there were no other sources within the Warren County NAA emitting above 1 TPY SO₂.

The attainment inventory includes the emission reductions from the Martins

Creek and Portland sources, which were primarily responsible for nonattainment, and the emission reductions from within Warren County. Additionally, the Martins Creek and Portland emission reductions have permanently reduced emissions. The EPA proposes to find that the attainment inventory provided by New Jersey is representative of the emission reductions that will attain and maintain the NAAQS and meet the LMP applicability criteria.

2. Demonstration of Maintenance

The EPA considers the maintenance demonstration requirement satisfied if the air quality for the area meets the criteria for limited maintenance areas (*i.e.*, design values are at or below 85% of the 1971 SO₂ NAAQS). There is no requirement to project emissions over the maintenance period. Instead, EPA believes that if an area is at or below 85% of exceedance levels, the air quality along with the continued applicability of PSD requirements (and any permanent and enforceable control measures), should provide adequate assurance of maintenance over the 10-year maintenance period. As previously discussed, the modeling and air monitoring values are well below the 85% threshold. Thus, an LMP option for the Warren County NAA is appropriate.

When EPA approves an LMP, we conclude that an emissions budget may be treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that such an area will experience enough growth in that period to cause a violation of the SO₂ NAAQS.

3. Monitoring Network and Verification of Continued Attainment

To verify the attainment status of the area over the maintenance period, the EPA generally requires a state to continue ambient air monitoring to meet the maintenance plan requirement for verification of continued attainment.

New Jersey has indicated in their submission that through the ongoing review of the monitoring data from the nearby monitors at Chester and Columbia, New Jersey will verify compliance with the SO₂ NAAQS throughout the maintenance period. New Jersey further notes that the State measures SO₂ using real-time monitoring methods, which is posted hourly to its website⁷³ and to USEPA’s Air Now website.⁷⁴ The State subsequently reviews and certifies the data, which is available from the EPA’s

⁷³ <https://www.njaqinow.net>.

⁷⁴ <https://www.airnow.gov>.

AQS website.⁷⁵ These procedures allow for the continual review of SO₂ measurements to verify compliance with the NAAQS in the Warren County NAA.

Additionally, New Jersey will verify continued maintenance by tracking and limiting SO₂ emissions through (1) federal and state air permitting and enforcement programs from any existing and future sources in the area, including the federal PSD program, which was delegated to New Jersey; (2) operating permitting programs for major and minor sources; and (3) the State's sulfur in fuels regulation.

New Jersey's verification measures for operating the Chester and Columbia monitors, along with the tracking and limiting of emissions, will ensure that SO₂ emissions remain low and provide assurance of continued maintenance in Warren County. Therefore, the EPA proposes to find that the monitoring network and verification of continued attainment provisions of the maintenance have been satisfied.

4. Contingency Plan

Section 175A of the CAA requires that a maintenance plan include such contingency measures as the EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must also include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

New Jersey's contingency plan focuses on ensuring that new sources or modifications of existing permitted sources through existing federal and state air permitting and enforcement programs, to assure that any violations of the NAAQS will not occur during the maintenance period.

Through its delegated PSD Program,⁷⁶ New Jersey will evaluate the impact of any new or modified SO₂ source in the former NAA to assure there are no new violations of the 1971 SO₂ NAAQS. Pursuant to the PSD rules, a new or

modified source subject to the rule must obtain a preconstruction permit and demonstrate compliance. The PSD rules require that the applicant install Best Available Control Technology (BACT), conduct an air impact analysis to verify compliance with the NAAQS and PSD increments, and review the impact of the new or modified source on Class I areas and on soil, vegetation, and visibility.

Other new and modified sources in the area would be regulated under New Jersey's enforcement and permitting program, specifically, N.J.A.C. 7:27-8 (Permits and Certificates for Minor Facilities [and Major Facilities without an Operating Permit]) and N.J.A.C. 7:27-22 (Operating Permits), which require newly constructed, reconstructed, or modified equipment and control apparatus to incorporate State of the Art (SOTA) in air pollution controls. SOTA control requirements are developed for the kind and amount of air contaminant emitted by an applicant's equipment or control apparatus. N.J.A.C. 7:27-8 has been approved into New Jersey's SIP.

Additionally, N.J.A.C. 7:27-18 (Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rule)) requires any new, reconstructed, or modified air pollutant source, not subject to PSD, to reduce emissions if it has a predicted SO₂ NAAQS violation (or obtain sufficient emission offsets to eliminate the NAAQS violation). N.J.A.C. 7:27-18 has been approved into New Jersey's SIP by EPA.

New Jersey does not have jurisdiction over new or modified sources in Pennsylvania that may cause an exceedance of the NAAQS in New Jersey. However, New Jersey notes that Pennsylvania's PSD program in 25 PA Code Chapter 127.81 through 83 will regulate proposed new major sources and major modifications in Pennsylvania. Pennsylvania's authority in 25 PA Code Chapter 127 (Construction, Modification, Reactivation and Operation of Sources) will control minor sources in the area. Both Pennsylvania programs have been approved into Pennsylvania's SIP and require that an air impact analysis be conducted. Therefore, these programs should also ensure that the emissions from Pennsylvania sources will not cause or interfere with attainment or maintenance of the SO₂ NAAQS in Warren County.

With the shutdown and dismantling of the Coal-Fired Units at Martins Creek (which were the primary cause of the nonattainment designation and modeled violations of the 1971 SO₂ NAAQS), and

the available evidence from previous modeling and monitoring that indicated attainment has been met by a wide margin, the EPA proposes to conclude that the State's contingency plan appropriately focuses on new sources or modifications of existing permitted sources to ensure maintenance of the NAAQS. Due to the total removal of the Coal-Fired Units at Martins Creek, the source of the modeled SO₂ violation has been eliminated. Both the New Jersey and Pennsylvania programs require an air impact analysis, which should ensure that the emissions from other sources will not cause or interfere with attainment or maintenance of the SO₂ NAAQS in Warren County. Additionally, New Jersey's and Pennsylvania's existing sulfur in fuels regulations,⁷⁷ which are both SIP-approved, continue to be implemented, and provide additional assurance that the SO₂ NAAQS will continue to be maintained in Warren County. We are therefore proposing to conclude that New Jersey's LMP addresses the "contingency plan" requirement of CAA section 175A.

IV. Environmental Justice Considerations

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address the "disproportionately high and adverse human health or environmental effects" which can impact minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." The EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

NJDEP provided a supplement to its SIP submission on March 16, 2023, which describes New Jersey's programs and initiatives addressing the needs of communities with EJ concerns. Although New Jersey included an EJ

⁷⁷ See N.J.A.C. 7:27-9; and 25 Pa. Code Chapter 123, section 123.22.

⁷⁵ <https://www.epa.gov/aqs>.

⁷⁶ New Jersey has delegated authority to implement PSD program provisions at 40 CFR 52.21.

evaluation as part of its SIP submittal, the CAA and applicable implementing regulations neither prohibit nor require such an evaluation.

New Jersey's Environmental Justice Law⁷⁸ was enacted on September 18, 2020. NJDEP's submittal explained that the EJ Law requires the NJDEP to evaluate the environmental and public health impacts of certain facilities on overburdened communities when reviewing certain permit applications and to adopt regulations to implement the provisions of the Act. For certain facility types, the law requires an Environmental Impact Assessment to be prepared by the applicant. In addition, NJDEP explained that the EJ Law requires facilities to hold their own public hearing prior to, and independent of, any hearing required by other regulations.

NJDEP indicated that they had proposed Environmental Justice Rules on June 6, 2022⁷⁹ which, once adopted, would clarify the criteria used to designate a neighborhood as an area with EJ concerns, provide more specifics on the facilities covered, and outline additional requirements that would be imposed on such facilities operating within areas with EJ concerns. The State subsequently adopted the rules on March 9, 2023.⁸⁰

NJDEP's Administrative Order (AO) 2021–25 provides guidance to facilities located or seeking to be located in overburdened communities. AO 2021–25 includes provisions for community engagement, assessment of facility impacts to environmental and public health stressors, and the implementation of appropriate measures to avoid or minimize adverse impacts.

NJDEP also created the "What's In My Community" tool, a GIS-mapping web application that allows a user to see the air permits issued in their community. The tool also identifies the overburdened communities, schools, hospitals, and emergency services (Police and Fire Departments). Public users can also see measurements from air monitors.

The EPA performed an EJ analysis for the 1971 SO₂ NAA in Warren County using Version 2.11 of the EPA's Environmental Justice Screening and Mapping Tool (EJ Screen). The analysis was done for the purpose of providing additional context and information about this rulemaking to the public and not as a basis for the action. In addition, there is no information in the record,

upon which this decision is based, that is inconsistent with the stated goal of Executive Order 12898—achieving EJ for people of color, low-income populations, and Indigenous peoples.

The EPA reviewed demographic data, which provides an assessment of individual demographic groups for the population living within Warren County, NJ. The EPA then compared the data to the national average for each of the demographic groups. The results of the demographic analysis indicate that Warren County has a lower proportion of people of color and low-income populations compared to the national average. Socioeconomic indicators such as percentage of people of color and low income were all at levels below the national averages.

At the time of this rulemaking, EPA's EJ analysis showed the percentage of the demographic index (percent people of color and the average percent low-income) for the NAA was lower than the national average (16% versus 35%). The percentage of people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) was significantly lower than the national average (16% versus 40%). The low-income percentage for the NAA was lower than the national average (17% versus 30%). Additionally, the supplemental demographic index (which includes the percentages for low life expectancy, low-income, unemployment, limited English speaking, and less than high school education) was lower than the national average (*i.e.*, 10% versus 15%).⁸¹

Furthermore, the EPA acknowledges that communities near and/or downwind of industrial sources may be subject to disproportionate environmental impacts of SO₂ emissions. However, due to the shutdown and dismantling of the Coal-Fired Units at Martins Creek, and the State's contingency measures, which focus on new sources or modifications of existing permitted sources, there is no indication that the Warren County NAA will have a problem maintaining the 1971 SO₂ NAAQS.

We therefore conclude that this proposed rule will not have or lead to disproportionately high or adverse human health or environmental effects on communities with EJ concerns.

V. Proposed Action

The EPA is proposing to approve New Jersey's request to redesignate the Warren County NAA to attainment for the 3-hour, 24-hour, and annual 1971

SO₂ NAAQS, based on the demonstrated compliance with the requirements of the redesignation criteria provided under CAA section 107(d)(3)(E). Final approval of this redesignation request would change the designation of the Warren County NAA from nonattainment to attainment. The EPA is also proposing to approve the maintenance plan as a revision to the New Jersey SIP.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with CAA provisions and applicable federal regulations.⁸² Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, if they meet CAA criteria. 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 proposed 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 14094 (88 FR 21879, April 11, 2023);
 - 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
 - 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.
- In addition, the SIP is not proposing 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

⁷⁸ N.J.S.A. 13:1D–1 *et seq.*

⁷⁹ N.J.A.C. 7:1C.

⁸⁰ <https://dep.nj.gov/wp-content/uploads/rules/adoptions/adopt-20230417a.pdf>.

⁸¹ See EJ Screen analyses provided in the docket for this action.

⁸² 42 U.S.C. 7410(k); 40 CFR 52.02(a).

Indian country, the rule does not have tribal implications and it 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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

NJDEP evaluated EJ considerations as part of its SIP submittal even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. EPA’s evaluation of the NJDEP’s environmental justice considerations is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. EPA is taking action under the CAA on reasoning independent of the NJDEP’s evaluation of environmental justice. Due to the nature of this action, it is expected to have a neutral to positive impact on the air quality of the affected area.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

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

Lisa Garcia,

Regional Administrator, Region 2.

[FR Doc. 2023–16649 Filed 8–11–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2022–0442; FRL–10601–01–R5]

Air Plan Approval; Ohio; Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing to approve a May 12, 2022, State Implementation Plan (SIP) submittal from the Ohio Environmental Protection Agency (OEPA). This SIP submittal consists of a source-specific limitation for certain process lines at Forest City Technologies, Plant 4, in Wellington, Ohio. The source-specific limitation reflects the lowest rate possible for the facility given technological and cost considerations. The source-specific limitation is established through the Ohio SIP, per the Ohio Administrative Code (OAC), and listed as an enforceable condition in the facility’s operating permit, issued by OEPA on June 23, 2020.

DATES: Comments must be received on or before September 13, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2022–0442 at <https://www.regulations.gov>, or via email to blakley.pamela@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on

making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, maietta.anthony@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION:

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

I. What is the background for this action?

On October 30, 2020, EPA approved OAC 3745–21–28(C)(4) into the Ohio SIP which allows for the establishment of source-specific volatile organic compound (VOC) emissions limits for industrial adhesive and sealant application units when the otherwise applicable emission limit is determined to be technically and/or economically infeasible. This rule provides specific conditions for Ohio to determine and approve source-specific VOC reasonably available control technology (RACT) emissions limits for production of miscellaneous industrial adhesives and sealants on a case-by-case basis. The source-specific VOC limit is established as an emissions rate or overall percent reduction, typically specified in the facility’s final permit-to-install or permit-to-install and operate.

There are several criteria necessary for establishing the source-specific VOC limit under OAC 3745–21–28(C)(4). OEPA must make a determination that the otherwise applicable VOC limit is technically or economically infeasible. The source-specific VOC limit must be the lowest rate possible considering technological and economic feasibility for the process involved. The source-specific VOC limit must then be approved by the EPA into the Ohio SIP.

On June 23, 2020, Ohio determined that Forest City Technologies’ encapsulated adhesive coating process equipment met the criteria for a source-specific VOC limit. In the time between renewal of the operating permit for Forest City Technologies, Ohio EPA adopted a VOC RACT limit of 0.3 pounds per gallon (lb/gal) into the Ohio SIP in Table 1 of OAC 3745–21–28(C)(1) for adhesives applied to a metal substrate. The 0.3 lb/gal VOC RACT limit reflects the limit identified in