

(38 U.S.C. 5302; Pub. L. 117–328, Title II, Subtitle E, sec. 254 (Dec. 29, 2022), unless otherwise noted.)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2019–0212; FRL–10997–03–R6]

Air Plan Disapproval; Louisiana; Removal of Excess Emissions Provisions; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action; correction.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that a portion of a December 7, 2023, final disapproval action of a state implementation plan (SIP) revision submitted by the State of Louisiana was in error and to make a correction pursuant to the Clean Air Act (CAA).

DATES: Comments must be received on or before December 9, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2019–0212 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

General questions concerning this publication should be addressed to Michael Feldman, Regional Haze and SO₂ Section, Air & Radiation Division, U.S. Environmental Protection Agency,

Region VI, 1201 Elm Street, Dallas, Texas 75270; by telephone (214) 665–9793 or by email at feldman.michael@epa.gov.

SUPPLEMENTARY INFORMATION:

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II. Background

This proposed action is to correct an error in an earlier EPA action, using the authority of section 110(k)(6) of the CAA. Section 110(k)(6) provides the EPA with explicit authority to correct errors in prior rulemaking actions:

Whenever the Administrator determines that the Administrator’s action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public.

Section 110(k)(6) of the CAA has been interpreted by courts as a “broad provision [that] was enacted to provide the EPA with an avenue to correct its own erroneous actions and grant the EPA the discretion to decide when to act pursuant to the provision.” *Miss. Comm’n on Env’tl. Quality v. EPA*, 790 F.3d 138, 150 (D.C. Cir. 2015).

The EPA notes that this statutory provision provides the EPA with authority to make corrections to actions on SIP submissions that are subsequently found to be in error. While CAA section 110(k)(6) provides the EPA with the authority to correct its own “error,” nowhere does this provision or any other provision in the CAA define what qualifies as “error,” and the EPA has used this explicit statutory authority on multiple occasions to correct various types of errors.¹

¹ See, e.g., 89 FR 76737 (September 19, 2024); 85 FR 57733 (September 16, 2020); 82 FR 14461 (March 21, 2017).

The error at issue here occurred in a December 7, 2023, EPA action² disapproving revisions to the SIP for the State of Louisiana submitted in response to the 2015 SSM SIP Action.³ On June 12, 2015, the EPA finalized the 2015 SSM SIP Action, which clarified, restated, and updated the EPA’s national policy regarding SIP provisions applying to excess emissions during periods of startup, shutdown, and malfunction (SSM). As part of the 2015 SSM SIP Action, the EPA issued a finding that certain SIP provisions for 36 states that were applicable in 45 statewide and local jurisdictions were substantially inadequate to meet CAA requirements due to how those SIP provisions treated excess emissions during SSM periods. Further, the EPA issued a “SIP call” to each of those 45 air agencies, including the State of Louisiana on the basis that Louisiana’s SIP contained impermissible automatic and discretionary exemptions that were substantially inadequate to meet CAA requirements.⁴ To respond to the EPA’s SIP call in the 2015 SSM SIP Action, each affected state was required to submit its corrective SIP revision by November 22, 2016. On December 7, 2023, the EPA took final action⁵ to disapprove certain portions of a SIP revision submitted by the State of Louisiana on November 20, 2016, and supplemented on June 9, 2017, because the EPA found that Louisiana’s SIP revision did not correct the deficiency identified in Louisiana’s SIP in the 2015 SSM SIP Action.⁶

On March 1, 2024, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *Environ. Comm. Fl. Elec. Power v. EPA*, 94 F.4th 77 (D.C. Cir. 2024). The case was a consolidated set of petitions for review of the 2015 SSM SIP Action. The Court granted the petitions in part, vacating the SIP calls that were based on SIP provisions that included automatic exemptions, director’s discretion provisions, and “complete affirmative

² 88 FR 85112 (December 7, 2023).

³ State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, 80 FR 33840 (June 12, 2015).

⁴ See 78 FR 12460, 12521–12522 (February 22, 2013) and 80 FR 33840 at 33967 (June 12, 2015).

⁵ See 88 FR 85112 (December 7, 2023).

⁶ On October 5, 2022, EPA Region 6 finalized approval of a portion of Louisiana’s SIP revision that corrected six of Louisiana’s seven deficient SIP provisions originally identified in EPA’s 2015 SSM SIP Call. See 87 FR 60292. On December 7, 2023 (88 FR 85112), the EPA Region 6 finalized disapproval of Louisiana’s SIP revision that sought to correct the remaining deficient provision.

defenses” (i.e., affirmative defenses that are functionally exemptions); and denied the petitions in part, affirming the SIP calls based on SIP provisions that included overbroad enforcement discretion provisions and affirmative defenses against specific relief. As a result of the D.C. Circuit’s decision in *Environ. Comm. Fl. Elec. Power v. EPA*, certain portions of the EPA’s SIP call in the 2015 SSM SIP Action were vacated by the D.C. Circuit and therefore have no legal effect. Thus, certain states subject to the 2015 SSM SIP Action no longer have a legal obligation to submit the revisions that the EPA had originally determined were required to correct the deficiencies identified in the SIP call.⁷ In other words, by partially vacating the EPA’s 2015 SSM SIP Action, the D.C. Circuit’s decision rendered Louisiana’s SIP submission in response to the 2015 SSM SIP Action voluntary rather than mandatory. As a result, the EPA is proposing to correct the EPA’s December 7, 2023, disapproval action with respect to the consequences of that disapproval.

III. What is the EPA’s authority to correct errors in SIP rulemakings?

Section 110(k)(6) of the CAA provides the EPA with the authority to make corrections to actions on CAA implementation plans that are subsequently found to be in error. *Ass’n of Irrigated Residents v. EPA*, 790 F.3d 934, 948 (9th Cir. 2015) (110(k)(6) is a “broad provision [that] was enacted to provide the EPA with an avenue to correct its own erroneous actions”). The key provisions of section 110(k)(6) are that the Administrator has the authority to “determine” that an action approving, disapproving, or promulgating a plan was “in error,” and when the Administrator does so, may then revise the action “as appropriate,” in the same manner as the prior action.⁸ Moreover, CAA section 110(k)(6) “confers discretion on the EPA to decide if and when it will invoke the statute to revise a prior action.” *Ass’n of Irrigated Residents v. EPA*, 790 F.3d at 948 (section 110(k)(6) grants the “EPA the discretion to decide when to act pursuant to that provision”). While CAA section 110(k)(6) provides the EPA with the authority to correct its own “error,” nowhere does this provision or

any other provision in the CAA define what qualifies as “error.” Thus, the EPA believes that the term should be given its plain language, everyday meaning, which includes all unintentional, incorrect, or wrong actions or mistakes.⁹ Under CAA section 110(k)(6), the EPA must make an error determination and provide the “the basis thereof.” There is no indication that this is a substantial burden for the EPA to meet. To the contrary, the requirement is met if the EPA clearly articulates the error and basis thereof. 790 F.3d at 948; see also 85 FR 73636, 73638. The EPA’s error in the prior rulemaking disapproving Louisiana’s SIP revision is discussed below.

IV. What is the EPA proposing to correct?

In this action, the EPA is proposing to correct the erroneous triggering of mandatory sanctions under CAA section 179 and 40 CFR 52.31 for the state of Louisiana following its December 7, 2023, disapproval of Louisiana’s SIP revision submitted in response to the 2015 SSM SIP Call. The EPA is also proposing to correct the erroneous triggering of the EPA’s obligation to issue a Federal Implementation Plan (FIP) under CAA section 110(c)(1)(B). As discussed in Section II of this document, the D.C. Circuit’s decision in *Environ. Comm. Fl. Elec. Power v. EPA* vacated several portions of the 2015 SSM SIP Call, rendering those portions as no longer having a legal effect. The states with provisions to which those vacated portions of the SIP call previously applied, including Louisiana, no longer have a legal obligation to submit the revisions that the EPA had originally determined were required to correct the identified deficiency. As such, the SIP revision submitted by Louisiana on November 20, 2016, and supplemented on June 9, 2017, is no longer considered a mandatory submission; EPA is therefore proposing to find that the EPA’s December 7, 2023, disapproval action should not trigger imposition of mandatory sanctions under CAA section 179 and 40 CFR 52.31 or a FIP obligation under CAA 110(c)(1)(B). The EPA notes that it is not proposing to correct the merits of the December 7, 2023 disapproval nor is it withdrawing its disapproval action—the EPA does not believe that the substantive basis for the disapproval as explained in that final action was erroneous; rather, the EPA is proposing to find that because the SIP submittal itself is no longer mandatory following the D.C. Circuit’s

partial vacatur, the triggering of sanctions under section 179 and 40 CFR 52.31, and the triggering of the EPA’s FIP obligation under 110(c)(1)(B), was in error. Therefore, if the EPA finalizes this error correction action as proposed, the imposition of sanctions for the State of Louisiana and the FIP obligation for the EPA that were triggered as a result of the December 7, 2023 final disapproval action would no longer be in effect.

V. What action is the EPA taking?

As a result of the D.C. Circuit’s decision in *Environ. Comm. Fl. Elec. Power v. EPA*, the EPA is proposing to determine that, pursuant to section 110(k)(6) of the CAA, a portion of the EPA’s December 7, 2023, final disapproval action of Louisiana’s SIP revision was in error with respect to the consequences of that disapproval. By partially vacating the EPA’s 2015 SSM SIP Action, the D.C. Circuit’s decision rendered Louisiana’s SIP submission in response to the 2015 SSM SIP Action voluntary rather than mandatory. Thus, the EPA is proposing to find that the triggering of mandatory sanctions and FIP obligation following the December 7, 2023, final disapproval was erroneous and, through this action, is proposing to terminate the imposition of sanctions for the State and the FIP obligation for the EPA triggered by that disapproval as they are no longer legally valid.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders (E.O.) can be found at www.epa.gov/laws-regulations/laws-and-executive-orders. Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. However, this action, which seeks to correct an error in a prior SIP disapproval action under section 110(k)(6) of the CAA, is neither an approval nor a disapproval. This action merely corrects an error in EPA’s prior action and does not impose additional requirements beyond those imposed by state law.

- 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

⁷ In vacating certain portions of the 2015 SSM SIP Action, the D.C. Circuit’s decision did not determine whether the SIP-called provisions were otherwise lawful under the CAA. See e.g., 94 F.4th at 110 (“We thus do not reach the question whether the called SIPs’ relevant emission restrictions in fact amount to (or must amount to) “emission limitations” per the statutory definition.”).

⁸ See 85 FR 73636, 73637 (November 19, 2020).

⁹ See 85 FR at 73637–38 (November 19, 2020).

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 is an error correction taken under section 110(k)(6) of the CAA and does not directly or disproportionately affect children.
- 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 CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the action does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

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 communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. EPA defines 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.”

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. Although not a basis for that action, the EPA performed an EJ analysis for informational purposes only in its June 13, 2023, proposed disapproval of Louisiana’s SIP revision. See 88 FR 38448, 38453–38455 (June 13, 2023) and 88 FR 85112, 85123–85124 (December 7, 2023) for more information. The EPA did not perform an EJ analysis and did not consider EJ in this action as the EPA views this action as a necessary procedural step following the D.C. Circuit decision and vacatur of portions of the 2015 SIP call. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Approval and promulgation of implementation plans, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: October 31, 2024.

Earthea Nance,

Regional Administrator, EPA Region 6.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0349; FRL–12130–01–R9]

Air Plan Revisions; Arizona; Maricopa County Air Quality Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of revisions to the Maricopa County Air Quality Department (MCAQD or “County”) portion of the Arizona State Implementation Plan (SIP). These revisions concern emissions of volatile

organic compounds (VOC) from loading of organic liquids and gasoline. We are proposing action on local rules to regulate these emission sources under the Clean Air Act (CAA or “Act”). We are also proposing to disapprove the MCAQD’s reasonably available control technology (RACT) demonstration for the source categories associated with these rules for the 2008 8-hour ozone national ambient air quality standards (NAAQS) in the Phoenix-Mesa ozone nonattainment area. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before December 9, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0349 at <https://www.regulations.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). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. **FOR FURTHER INFORMATION CONTACT:** Donnique Sherman, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4129; email at sherman.donique@epa.gov. **SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. The State’s Submittal