

as deficient. This approval is limited because the EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3).

In addition, a final limited disapproval would trigger sanctions under CAA section 179 and 40 CFR 52.31 unless the EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of the final action.

Note that the submitted rule has been adopted by the YSAQMD, and the EPA's final limited disapproval would not prevent the local agency from enforcing it. The limited disapproval also would not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at: <https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf>.

### III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the YSAQMD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### IV. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

#### B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

#### C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not

impose additional requirements beyond those imposed by state law.

#### D. Regulatory Flexibility Act (RFA)

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

#### E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

#### F. Executive Order 13132: Federalism

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

#### G. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved 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, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

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

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

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

#### J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

#### List of Subjects in 40 CFR Part 52

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

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

Dated: February 9, 2021.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2021–03197 Filed 2–24–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R09–OAR–2021–0014; FRL–10020–56–Region 9]

### Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or “the District”) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO<sub>x</sub>) and particulate matter (PM) from

indirect sources associated with new development projects as well as NO<sub>x</sub> and PM emissions from certain transportation and transit development projects. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Comments must be received on or before March 29, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0014 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 disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** La Kenya Evans, EPA Region IX, 75 Hawthorne St., San Francisco, CA

94105. By phone: (415) 972-3245 or by email at [evans.lakenya@epa.gov](mailto:evans.lakenya@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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

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- I. The State’s Submittal
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  - C. What is the purpose of the submitted rule revision?
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  - A. How is the EPA evaluating the rule?
  - B. Does the rule meet the evaluation criteria?
  - C. The EPA’s Recommendations To Further Improve the Rule
  - D. Public Comment and Proposed Action
- III. Incorporation by Reference
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#### I. The State’s Submittal

##### A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Amended	Submitted
SJVUAPCD .....	9510	Indirect Source Review .....	12/21/17 (effective March 21, 2018).	05/23/18

On November 23, 2018, the submittal for SJVUAPCD Rule 9510 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

#### B. Are there other versions of this rule?

We approved an earlier version of Rule 9510 into the SIP on May 9, 2011 (76 FR 26609). The SJVUAPCD adopted revisions to the SIP-approved version on December 21, 2017, and the CARB submitted the revised rule to the EPA on May 23, 2018. If we take final action to approve the December 21, 2017 version of Rule 9510, this version will replace the previously approved version of this rule in the SIP.

#### C. What is the purpose of the submitted rule revision?

Emissions of NO<sub>x</sub> contribute to the production of ground-level ozone, smog and PM, which harm human health and the environment. Emissions of PM, including PM equal to or less than 2.5 microns in diameter (PM<sub>2.5</sub>) and PM equal to or less than 10 microns in diameter (PM<sub>10</sub>), contribute to effects that are harmful to human health and

the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations that control NO<sub>x</sub> and PM emissions.

Rule 9510 is an indirect source review (ISR) rule that establishes a mechanism to reduce or offset emissions of NO<sub>x</sub> and PM<sub>10</sub> in the San Joaquin Valley from the construction and use of development projects through design features, on-site measures, and off-site measures. The rule requires applicants of new development projects to reduce operational and construction equipment NO<sub>x</sub> and PM<sub>10</sub> emissions by specific percentages, as compared to an unmitigated baseline. The rule requires applicants to incorporate design features and on-site measures into the development project or pay a mitigation fee for emissions in excess of the requirement. SJVUAPCD uses the fees to fund off-site emission reduction projects.

The SIP-approved version of the rule applies to project applicants seeking “final discretionary approval” for a

development project. However, through implementation of the existing rule, the District has found that projects subject to final discretionary approval can vary between public agencies for the same type of project, especially large development projects. SJVUAPCD modified Rule 9510 to ensure the rule is applied consistently to all large development projects in the San Joaquin Valley by adding additional applicability criteria for large development projects and making clarifying and editorial changes to the rule. “Grandfathered Large Development Projects” and previously exempt large development projects that received a building permit, conditional use permit, or other similar approval by March 21, 2018, remain exempt from this rule. The EPA’s technical support document (TSD) has more information about this rule.

#### II. The EPA’s Evaluation and Action

##### A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA

requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

The San Joaquin Valley is currently designated and classified as an Extreme 1-hour ozone nonattainment area and an Extreme 8-hour ozone nonattainment area under the 1997, 2008, and 2015 standards (40 CFR 81.305). CAA section 172(c)(1) requires ozone nonattainment areas to implement all reasonably available control measures (RACM), including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT), as expeditiously as practicable. CAA sections 182(b)(2) and 182(f) specify that implementation of RACT under CAA section 172(c)(1) is required for all major stationary sources of NO<sub>x</sub> in the area.

Generally, SIP rules must implement Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in Serious PM<sub>2.5</sub> nonattainment areas (see CAA section 189(b)(1)(B)). The SJVUAPCD regulates a PM<sub>2.5</sub> nonattainment area classified as Serious for the PM<sub>2.5</sub> for the 1997 annual and 24-hour PM<sub>2.5</sub> standards and the 2006 24-hour PM<sub>2.5</sub> standards (40 CFR 81.305). A BACM and BACT evaluation is generally performed in context of a broader plan. The area is currently designated attainment for PM<sub>10</sub>. Accordingly, SJVUAPCD is not required to implement BACM or BACT for PM<sub>10</sub> and PM<sub>10</sub> precursors.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

#### *B. Does the rule meet the evaluation criteria?*

In our May 9, 2011 (76 FR 26609) final rule approval of Rule 9510 into the SIP, we identified a number of concerns about the enforceability of the rule's provisions, *e.g.*, provisions that allow project developers to pay a fee instead of implementing on-site pollution mitigation plans, and noted that the State would need to resolve these

enforceability issues before relying on this rule for credit in an attainment plan. The District has not addressed these concerns in the submitted rule, and we therefore continue to conclude that the rule does not qualify for emission reduction credit for the purpose of any attainment or progress demonstration in any area.

As described above, the District revised the rule applicability to include large development projects that are not currently subject to the rule and made editorial and clarifying changes. The revisions are generally clear and strengthen the rule. In addition to addressing the enforceability concerns outlined in our prior action, if the District plans to rely on emission reductions from this rule for attainment or progress demonstrations, the District should revise section 3.17 to further clarify which "Grandfathered Large Development Projects" are exempt from the rule by quantifying "substantial loss" and include other specific criteria that would allow for these provisions to be applied in a consistent and replicable manner.

With respect to rule stringency, we note that Rule 9510 is an ISR rule, and that EPA is prohibited by the CAA from requiring states and local air agencies to include ISR programs in SIPs.<sup>1</sup> Because EPA cannot require a state or local air agency to adopt and implement an ISR program, the EPA cannot require that such a program meet any particular level of stringency. Therefore, we are not evaluating amended Rule 9510 for compliance with the RACM/RACT or BACM/BACT requirements.

We conclude the rule is consistent with the relevant requirements, policy, and guidance regarding SIP relaxations since the rule revisions add further applicability and strengthen the current SIP-approved rule. However, we continue to conclude that the rule is not fully consistent with the relevant requirements, policy, and guidance on enforceability. While Rule 9510 does not meet all the evaluation criteria for enforceability, the EPA proposes to fully approve the submitted rule because it would strengthen the SIP compared to the current SIP-approved rule. In light of the deficiencies identified in our prior action and above, we continue to conclude that the rule should not be credited in any attainment and rate of progress/reasonable further progress demonstrations. The TSD has more information on our evaluation.

<sup>1</sup>CAA section 110(a)(5)(A)(i).

#### *C. The EPA's Recommendations to Further Improve the Rule*

The TSD includes recommendations for the next time the local agency modifies the rule.

#### *D. Public Comment and Proposed Action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule. We will accept comments from the public on this proposal until March 29, 2021. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

### **III. Incorporation by Reference**

In this rulemaking, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the San Joaquin Valley Unified Air Pollution Control District rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve 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 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

#### List of Subjects in 40 CFR Part 52

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

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

Dated: February 16, 2021.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2021–03481 Filed 2–24–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA–R02–OAR–2020–0431, FRL–10016–26–Region 2]

### Approval and Promulgation of State Plans for Designated Facilities; New York; Section 111(d) State Plan for MSW Landfills

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to New York’s section 111(d) state plan (the “State Plan”) for Municipal Solid Waste (MSW) landfills, pursuant to the Clean Air Act (“CAA” or the “Act”). The proposed State Plan revision consists of amendments to New York’s “Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills,” as well as attendant revisions to “General Provisions.” The primary goal of this regulation is to implement and enforce the Emission Guidelines (EG) promulgated by the EPA for MSW landfills on August 29, 2016. The goal of the revised federal EG is to reduce emissions of landfill gas containing Non-methane Organic Compounds (NMOC) and methane by lowering the emissions threshold at which an existing MSW landfill must install and operate a Gas Collection and Control System (GCCS). The emission threshold reduction will address air emissions from all affected MSW landfills, including NMOC and methane. The reduction of emissions will improve air quality and protect the public health from exposure to landfill gas emissions.

**DATES:** Written comments must be received on or before March 29, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R02–OAR–2020–0431 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment, and should include discussion of all points you wish to make. The EPA will generally not

consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file-sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Fausto Taveras, Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007–1866, at (212) 637–3378, or by email at [Taveras.Fausto@epa.gov](mailto:Taveras.Fausto@epa.gov).

**SUPPLEMENTARY INFORMATION:** The Supplementary Information section is arranged as follows:

#### I. EPA Action

A. What action is the EPA proposing today?

B. Who is affected by New York’s revised State Plan?

#### II. Background

A. What is a state plan?

B. Why is the EPA requiring New York to submit a revised MSW landfill state plan?

C. What are the requirements for a revised MSW landfill state plan?

D. What revisions did the EPA make to 40 CFR part 60 subpart Cf on August 29, 2016?

#### III. New York’s State Plan

A. What is contained in the New York’s revised State Plan?

B. What approval criteria did we use to evaluate New York’s revised State Plan?

#### IV. Incorporation by Reference

V. What is the EPA’s conclusion?

VI. Statutory and Executive Order Reviews

#### I. EPA Action

*A. What action is the EPA proposing today?*

The EPA is proposing to approve the State of New York’s revised section 111(d) state plan for MSW landfills, for the purpose of incorporating the adoption of Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 208. In a letter dated December 11, 2019, the New York State Department of Environmental Conservation (NYSDEC), on behalf of the State of New York, submitted to the EPA a state plan entitled, “Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills,” which contains a New York State-approved regulation for the purpose of lowering the emissions threshold within MSW landfills through the installation of Gas Collection and Control Systems (GCCS). The State Plan incorporates by reference the revised EG codified at 40 CFR part 60 subpart Cf, which applies to MSW landfills that have accepted waste at any