

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2009-0512; FRL-9125-6]

Determination of Attainment, Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking several related actions under the Clean Air Act (CAA) affecting the Indiana portion (Lake and Porter Counties) of the Chicago-Gary-Lake County, Illinois-Indiana (IL-IN) 1997 eight-hour ozone nonattainment area. First, EPA is making a determination that this area has attained the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS). In addition, EPA is approving a request from the State of Indiana to exempt sources of Nitrogen Oxides (NO_x) in Lake and Porter Counties from CAA Reasonably Available Control Technology (RACT) requirements.

DATES: This final rule is effective on April 12, 2010.

ADDRESSES: EPA has established a docket for this action: Docket ID No. EPA-R05-OAR-2009-0512. All documents in the docket are listed on the <http://www.regulation.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, 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 either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Edward Doty, Environmental Scientist, at (312) 886-6057 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6057, doty.edward@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

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I. What is the Background for This Rule?

On September 24, 2009, EPA proposed to make a determination that the Chicago-Gary-Lake County, IL-IN ozone nonattainment area has attained the 1997 eight-hour ozone NAAQS. That determination was based on complete quality-assured ambient air quality monitoring data for the period of 2006–2008. Additional background on the applicable NAAQS and EPA’s data are contained in that proposed rule (74 FR 48704–48706). In the same action, EPA proposed to approve Indiana’s NO_x RACT waiver request under section 182(f) of the CAA, based on the proposed determination of attainment.

In addition, also on September 24, 2009 (74 FR 48662), EPA published a rule in which it made an interim final determination that, with respect to the NO_x RACT requirement, the State had corrected a deficiency which had been the basis for a sanctions clock. This determination was contingent upon continued monitored attainment of the 1997 eight-hour ozone NAAQS. As discussed in a proposed rule addressing an Indiana ozone redesignation request for Lake and Porter Counties, also published in today’s **Federal Register**, the Chicago-Gary-Lake County, IL-IN area has continued to attain the 1997 eight-hour ozone NAAQS through 2009.

II. What Comments did We Receive on the Proposed Rules and on the Related Interim Final Rule?

The comment periods for the proposed rules and the interim final rule closed on October 26, 2009. We did not receive any comments.

III. What Action is EPA Taking?

Based on three current years of quality-assured ozone data, EPA determines that the Chicago-Gary-Lake County, IL-IN ozone nonattainment area is attaining the 1997 eight-hour ozone NAAQS. EPA is also approving Indiana’s request for a NO_x waiver from the CAA requirements for RACT rules in Lake and Porter Counties. This waiver will continue as long as the Chicago-

Gary-Lake County, IL-IN area continues to monitor attainment of the 1997 eight-hour ozone standard. If Lake and Porter Counties are subsequently redesignated to attainment of the 1997 eight-hour ozone standard, as requested by the State, this waiver will become permanent.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 11, 2010. Filing a

petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: February 25, 2010.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 55—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart P—Indiana

■ 2. Section 52.777 is amended by adding paragraphs (ll) and (mm) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

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(ll) Lake/Porter Co 8-hr Ozone NO_x Waiver—On June 5, 2009, the Indiana Department of Environmental Management (IDEM) requested that EPA grant a waiver from the Clean Air Act requirement for Nitrogen Oxides (NO_x) Reasonably Available Control Technology (RACT) in Lake and Porter Counties. After review of this submission, EPA approves and grants this NO_x RACT waiver to Lake and Porter Counties.

(mm) Lake/Porter Co 8-hr Ozone Finding of Attainment—On June 5, 2009, the Indiana Department of Environmental Management (IDEM) requested that EPA find that the Indiana portion of the Chicago-Gary-Lake County, Illinois-Indiana (IL-IN) ozone nonattainment area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). After review of this submission and 2006–2008 ozone air quality data for this ozone nonattainment area, EPA finds that Lake and Porter Counties and the entire Chicago-Gary-Lake County, IL-IN area have attained the 1997 8-hour ozone NAAQS.

[FR Doc. 2010–5110 Filed 3–11–10; 8:45 am]

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