

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2020–0580; FRL–11047–01–R5]

#### Air Plan Approval; Ohio; Proposed Approval of the Muskingum River SO<sub>2</sub> Attainment Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve, under the Clean Air Act (CAA), a revision to the Ohio State Implementation Plan (SIP) intended to provide for attainment of the 2010 primary, health-based 1-hour sulfur dioxide (SO<sub>2</sub>) national ambient air quality standard (NAAQS or standard) for the Muskingum River SO<sub>2</sub> nonattainment area. This SIP revision (hereinafter referred to as Ohio's Muskingum River SO<sub>2</sub> attainment plan or plan) includes Ohio's attainment demonstration and other attainment planning elements required under the CAA. EPA proposes to find that Ohio has appropriately demonstrated that the plan provides for attainment of the 2010 1-hour primary SO<sub>2</sub> NAAQS in the Muskingum River, Ohio nonattainment area and that the plan meets the other applicable requirements under the CAA. EPA is also proposing to incorporate by reference Ohio's Director's Final Findings and Orders (DFFOs), issued on May 23, 2023, into the Ohio SIP. The DFFOs set forth additional requirements at Globe Metallurgical (Globe) to verify appropriate source characterization for modeling purposes.

**DATES:** Comments must be received on or before July 24, 2023.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2020–0580 at <https://www.regulations.gov>, or via email to [arra.sarah@epa.gov](mailto:arra.sarah@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:** Gina Harrison, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6956, [harrison.gina@epa.gov](mailto:harrison.gina@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.

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

#### I. Background

On January 18, 2022,<sup>1</sup> EPA partially approved and partially disapproved Ohio's SO<sub>2</sub> plan for the Muskingum River area submitted on April 3, 2015, and October 13, 2015, and supplemented on June 23, 2020. EPA's January 18, 2022, final rule provided an explanation of the applicable provisions in the CAA and the measures and limitations identified in Ohio's attainment plan to satisfy these provisions. EPA approved the base year emissions inventory and affirmed that the new source review requirements for the area had previously been met. In addition to an attainment demonstration, the January 18, 2022, final rule addressed the requirements for meeting reasonable further progress (RFP) toward attainment of the NAAQS, reasonably available control measures (RACM) and reasonably available control technology (RACT), enforceable emission limitations and control measures, base-year and projection-year emission inventories, and contingency measures.

Ohio's June 23, 2020, submittal was based on, among other things, an agreement that the Globe facility would purchase a tract of property to the north that was modeled to be impacted by SO<sub>2</sub> emissions from the facility. Globe decided not to purchase the land as

anticipated by the attainment plan. As the attainment demonstration relied on the inclusion of this property within Globe's fenceline, failure to obtain the land rendered the attainment demonstration invalid, and EPA disapproved Ohio's attainment demonstration for the Muskingum River SO<sub>2</sub> nonattainment area. This disapproval started sanctions clocks for this area under CAA section 179(a)–(b), including a requirement for 2-for-1 offsets for any major new sources or major modifications 18 months after the effective date of this action, and highway funding sanctions 6 months thereafter, as well as initiated an obligation for EPA to promulgate a Federal Implementation Plan within 24 months, under CAA section 110(c).

#### II. EPA's Evaluation of Ohio's Submittal

Ohio submitted a supplement to the attainment demonstration on June 24, 2022, to substitute new measures in lieu of the land acquisition. The supplement identifies a modification to the Shop 1 baghouse at the Globe facility that added a vertical release exhaust point at the roof monitor. Ohio also modified the air quality modeling analysis to include the use of site-specific meteorological data instead of National Weather Service data collected 20 miles off-site.

On July 28, 2022, in accordance with Ohio's June 23, 2020, DFFOs, Globe submitted the final report for validation testing conducted on January 11 and 13, 2022. This testing was required to verify the accuracy of the mass balance calculations used to determine compliance with the SO<sub>2</sub> emissions limits. EPA and Ohio EPA agree that the validation testing did verify the accuracy of the mass balance calculations, but the flows measured during the validation testing were different from those used in the air quality modeling that serves as the basis for the attainment demonstration. In addition, during the testing a damper blade was stuck in the open position. While neither affected the mass balance nor the validation testing results, the flow and temperature measurements and the amount of dilution air added after the measurement point may have been affected, which raised questions about the appropriateness of certain modeling parameters used in the source characterization and modeling.

As a result, Ohio submitted additional supplemental information on May 23, 2023, including revised DFFOs for Globe that superseded the June 23, 2020, DFFOs. The new DFFOs retain the SO<sub>2</sub> emission limits set forth in the previous DFFOs but require additional testing within one year of the effective date of

<sup>1</sup> 87 FR 2555 (effective February 17, 2022).

the DFFOs to verify the source characterization parameters used in the air quality modeling, including the flow and temperature measurements and the amount of dilution air added after the measurement point. The new DFFOs also require: submittal of a testing protocol to be approved by Ohio EPA in consultation with EPA; continuous monitoring of the damper position and installation of a sensor to detect and record when the damper is not fully closed; automated alarms if the damper is open longer than fifteen minutes; daily visual checks of the damper; reporting of malfunctions; prompt action to respond to any alarms, malfunctions, or inspections which indicate that the damper may be open outside of normally intended operations. The new DFFOs also require associated recordkeeping and reporting. If the values measured in the source characterization testing are determined by Ohio EPA to be sufficiently different from the values used in the current modeling, such that it would be reasonably expected that updated modeling may no longer demonstrate attainment of the standard, the DFFOs require that Globe submit a revised attainment demonstration with updated modeling demonstrating attainment using updated parameters. In that event, Globe will be required to submit an updated modeling protocol, which will be reviewed and approved by Ohio EPA in consultation with EPA.

The 2023 DFFOs will remain in effect until requirements demonstrating attainment of the standard (including procedures for determining compliance) are incorporated into Ohio Administrative Code Chapter 3745–18, the rules are approved into Ohio's SIP, and the requirements are incorporated into the facility's title V operating permit.

### III. What action is EPA taking?

EPA is proposing to approve Ohio's SIP attainment plan submission for the Muskingum River SO<sub>2</sub> nonattainment area, which the state previously submitted to EPA on April 3, 2015, October 13, 2015, and June 23, 2020, and supplemented on June 24, 2022, July 28, 2022, and May 23, 2023. This SO<sub>2</sub> attainment plan included Ohio's attainment demonstration for this area. The attainment plan also addressed requirements for emission inventories, RACT/RACM, RFP, and contingency measures. Ohio has previously addressed requirements regarding nonattainment area new source review. Because Ohio's submission provides an appropriate testing requirement to confirm the modeling, EPA has

determined that Ohio's SO<sub>2</sub> attainment plan for the Muskingum River SO<sub>2</sub> nonattainment area meets the applicable requirements of CAA sections 110, 172, 191, and 192.

A key element of Ohio's attainment plan is Ohio's revised DFFOs issued to Globe on May 23, 2023. Among other requirements, Ohio's DFFOs retain SO<sub>2</sub> emission limits for Globe set forth in the 2020 DFFOs as a matrix of limits based on 26 separate operating scenarios at the two baghouses, where each of the 26 scenarios was modeled to demonstrate attainment and maintenance of the SO<sub>2</sub> standard. As part of this proposed approval of Ohio's attainment plan for this area, EPA would approve Ohio's May 23, 2023, DFFOs for the Globe facility into the SIP. These DFFOs supersede the previous 2020 DFFOs, retain the SO<sub>2</sub> limits and other requirements set forth in the 2020 DFFOs, and require additional testing, monitoring, and confirmation of certain flow parameters for verification of source modeling characterization. EPA finds that these requirements are sufficient for the required attainment plan demonstration.

By this action, EPA is proposing to codify its approval of both Ohio's May 23, 2023, DFFOs and Ohio's attainment plan for the Muskingum River SO<sub>2</sub> nonattainment area.

### IV. Incorporation by Reference

In this rule, 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, EPA is proposing to incorporate by reference Ohio's DFFOs issued to Globe Metallurgical, effective May 23, 2023, discussed in section II. of this preamble. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 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 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 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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 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.”

Ohio EPA 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. EPA did not perform an EJ analysis and did not consider EJ in this action. 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 people of color, low-income populations, and Indigenous peoples.

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

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

Dated: June 15, 2023.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2023-13230 Filed 6-21-23; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 721

[EPA-HQ-OPPT-2023-0012; FRL-9430-01-OCSPP]

RIN 2070-AL07

### Flame Retardants; Significant New Uses Rules for Certain Non-Ongoing Uses

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

**ACTION:** Proposed rule.

**SUMMARY:** Under the Toxic Substances Control Act (TSCA), EPA is proposing significant new use rules (SNURs) for three flame retardants, tris(2-chloroethyl) phosphate (TCEP), 4,4'-(1-methylethylidene)bis[2, 6-dibromophenol], also known as “tetrabromobisphenol A,” (TBBPA), and triphenyl phosphate (TPP), which are all undergoing TSCA risk evaluations. The proposed significant new uses are manufacture (including import) or processing for any use, with the exception that the conditions of use the Agency expects to consider within the scope of the TSCA section 6 risk evaluations are not proposed as significant new uses. Persons subject to

the SNUR would be required to notify EPA at least 90 days before commencing any manufacturing (including import) or processing of the chemical substance for a significant new use. Once EPA receives a notification, EPA must review and make an affirmative determination on the notification, and take such action as is required by any such determination before the manufacture (including import) or processing for the significant new use can commence.

**DATES:** Comments must be received on or before August 7, 2023.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2023-0012, using the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

#### FOR FURTHER INFORMATION CONTACT:

*For technical information contact:* Thomas Groeneveld, Office of Pollution Prevention and Toxics (7404M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-1188; email address: [existing.chemical.SNUR@epa.gov](mailto:existing.chemical.SNUR@epa.gov).

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Summary

*A. What is the Agency's authority for taking this action?*

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a “significant new use.” EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2) (see Unit II.A.). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture (including import) or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)(i)). TSCA further provides that such manufacturing (including import) or

processing may not commence until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination (15 U.S.C. 2604(a)(1)(B)(ii)). EPA has long interpreted the statutory term “significant new use” to include the resumption of a use that had ceased prior to promulgation of the proposed SNUR, for example see, April 25, 2019 (84 FR 17345) (FRL-9991-33); March 8, 2016 (81 FR 20535 (FRL-9943-83)); December 29, 2014 (79 FR 77891 (FRL-9915-60)) and October 22, 2013 (78 FR 62443 (FRL-9397-1)), and EPA will not determine that a use is a “significant new use” if information reasonably available to the Agency, including that received during the period for public comment, establishes that the use is ongoing at the time the proposed rule is published in the **Federal Register**.

##### B. What action is the Agency taking?

EPA is proposing SNURs for the following three flame retardants undergoing TSCA section 6 risk evaluations:

- Tris(2-chloroethyl) phosphate (TCEP), CASRN 115-96-8 (Ref. 1);
- 4,4'-(1-methylethylidene)bis[2, 6-dibromophenol], also known as “tetrabromobisphenol A,” (TBBPA), CASRN 79-94-7 (Ref. 2); and
- Triphenyl phosphate (TPP), CASRN 115-86-6 (Ref. 3).

The proposed significant new uses are manufacture (including import) or processing for any use, with the exception that the conditions of use that EPA expects to consider within the scope of the TSCA section 6 risk evaluations are not proposed as significant new uses (Refs. 1, 2, and 3). The conditions of use that EPA identified for the TSCA section 6 risk evaluations include all manufacture, processing, and use the Agency believes to be ongoing, as well as legacy uses and associated disposal, in the United States based on reasonably available information. The proposed significant new uses include manufacture and processing for uses that have ceased; manufacture and processing for uses that have not yet ceased but for which all manufacture and processing has ceased; and manufacture and processing for uses for which EPA has no information demonstrating that the use has previously commenced in the United States. EPA will consider any information received during the period for public comment suggesting that particular uses had commenced in the United States and not ceased prior to