

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2012-0521; FRL-9783-7]

#### Approval and Promulgation of Air Quality Implementation Plans; Delaware; Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). This revision pertains to EPA's greenhouse gas (GHG) permitting provisions as promulgated on June 3, 2010. This action is being taken under the Clean Air Act (CAA). **DATES:** This final rule is effective on April 1, 2013.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2012-0521. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, 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 through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** David Talley, (215) 814-2117, or by email at [talley.david@epa.gov](mailto:talley.david@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On October 29, 2012 (77 FR 65518), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of revisions to Delaware's Prevention of Significant Deterioration (PSD) program pertaining to the regulation of GHGs.

The formal SIP revision was submitted by Delaware on October 12, 2011 and supplemented on August 9, 2012.

##### II. Summary of SIP Revision

This revision pertains to EPA's PSD permitting provisions relating to GHGs as promulgated on June 3, 2010 in the Tailoring Rule (75 FR 31514). The SIP revision modifies Delaware's PSD program at 7 DE Admin. Code 1125 to establish appropriate emission thresholds for determining which new stationary sources and modifications become subject to Delaware's PSD permitting requirements for their GHG emissions. Other specific requirements of this SIP revision and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

##### III. Final Action

EPA is approving Delaware's October 12, 2011 and August 9, 2012 submissions as a revision to the Delaware SIP.

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

###### A. General Requirements

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.

###### B. Submission to Congress and the Comptroller General

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).

###### C. Petitions for Judicial Review

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 April 29, 2013. 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 pertaining to Delaware's GHG regulations 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 8, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart I—Delaware

■ 2. In § 52.420, the table in paragraph (c) is amended by revising the entry for Regulation 1125, Section 1.0 to read as follows:

#### § 52.420 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

#### EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
<b>1125 Requirements for Preconstruction Permitting</b>				
Section 1.0 .....	General Provisions .....	8/11/12	2/28/13 [ <i>Insert page number where the document begins</i> ].	Added definitions of “GHG” and “Subject to Regulation” under Section 1.9. Note: In section 1.9, the previous SIP-approved baseline dates for sulfur dioxide, particulate matter, and nitrogen dioxide in the definition of “Baseline Date” remain part of the SIP.
*	*	*	*	*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R03-OAR-2012-0305; FRL-9783-9]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Deferral for CO<sub>2</sub> Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration Program

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Maryland Department of the Environment (MDE) on April 4, 2012. This revision defers until July 21, 2014 the application of the Prevention of Significant Deterioration (PSD) permitting requirements to biogenic carbon dioxide (CO<sub>2</sub>) emissions from bioenergy and other biogenic stationary sources in the State of Maryland. This action is being taken under the Clean Air Act (CAA).

**DATES:** This final rule is effective on April 1, 2013.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2012-0305. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, 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 through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** David Talley, (215) 814-2117, or by email at [talley.david@epa.gov](mailto:talley.david@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On September 7, 2012 (77 FR 55171), EPA published a notice of proposed rulemaking (NPR) for the State of

Maryland. The NPR proposed approval of a revision to the Maryland SIP which would defer until July 21, 2014 the application of PSD permitting requirements to biogenic CO<sub>2</sub> emissions from bioenergy and other biogenic stationary sources in Maryland. The formal SIP revision (#12-02) was submitted by MDE on April 4, 2012. During the public comment period, EPA received a request from a commenter to extend the comment period. In response to that request, EPA re-opened the public comment period for an additional 30 days under additional notice on November 16, 2012 (77 FR 68721).

##### II. Summary of SIP Revision

EPA incorporated the biomass deferral into the Code of Federal Regulations (CFR) governing state programs and into the Federal PSD program by amending the definition of “subject to regulation” under 40 CFR 51.166 and 52.21 respectively. Maryland implements its PSD program by incorporating section 52.21 by reference. This incorporation references a date specific version of the CFR and is updated periodically and submitted to EPA for approval into the SIP. In order to adopt the Biomass Deferral, Maryland has revised COMAR 26.11.06.14B(1) to incorporate the 2009 version of 40 CFR 52.21 “as amended by” the Tailoring Rule and the Biomass