

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R04-OAR-2022-0155; FRL-10503-02-R4]

**Air Plan Approval; Tennessee; Packaging Corporation of America Nitrogen Oxides SIP Call Alternative Monitoring****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is conditionally approving revisions to the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), through a letter dated June 29, 2021. This revision establishes alternative monitoring, recordkeeping, and reporting requirements under the Nitrogen Oxides (NO<sub>x</sub>) SIP Call. EPA is finalizing action to conditionally approve these changes pursuant to the Clean Air Act (CAA or Act).

**DATES:** This rule is effective March 13, 2023.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2022-0155. All documents in the docket are listed on the *regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information 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* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Steven Scofield, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental

Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9034. Mr. Scofield can also be reached via electronic mail at *scofield.steve@epa.gov*.

**SUPPLEMENTARY INFORMATION:****I. Background**

Packaging Company of America (PCA) petitioned TDEC to adopt revised permit conditions applicable to PCA's Highway 57, Counce, Tennessee facility (PCA Counce Mill) with an alternative monitoring option for this large non-EGU, along with corresponding revised recordkeeping and reporting conditions. This petition resulted in the issuance of the permit for PCA Counce Mill included as part of TDEC's SIP submittal. The changes allow PCA Counce Mill to address the NO<sub>x</sub> SIP Call's requirements for enforceable limits on ozone season NO<sub>x</sub> mass emissions through non-Part 75 alternative monitoring and reporting methodologies. The June 29, 2021, source-specific SIP revision submitted by TDEC contains the permit provisions that TDEC modified to specifically address the alternative monitoring provisions allowed under the NO<sub>x</sub> SIP Call. TDEC requests conditional approval of those provisions into the SIP.

Through a notice of proposed rulemaking (NPRM) published on December 23, 2022 (87 FR 78892), EPA proposed to conditionally approve the June 10, 2021, changes to Tennessee Air Pollution Control Board operating permit No. 078563 contained in TDEC's June 29, 2021 submittal. TDEC requests that this approval be conditioned on Tennessee's commitment to modify the provisions at Tennessee Air Pollution Control Regulation (TAPCR) 1200-03-27.12(11) to specify allowable non-Part 75 permissible alternative monitoring and reporting methodologies for large industrial non-EGUs subject to the NO<sub>x</sub> SIP Call, such as the alternative monitoring and reporting provisions in permit No. 078563. The details of Tennessee's submission, as well as the background and EPA's rationale for conditionally approving the changes, are described in more detail in the December 23, 2022, NPRM. Comments on the December 23, 2022, NPRM were due on or before January 23, 2023. No comments were received on the December 23, 2022, NPRM, adverse or otherwise.

**II. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes

incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section III of this preamble, EPA is finalizing the incorporation by reference of Tennessee Air Pollution Control Board operating permit No. 078563 for PCA Counce Mill, state effective on June 10, 2021, into the Tennessee SIP. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

**III. Final Action**

EPA is taking final action to conditionally approve Tennessee Air Pollution Control Board operating permit No. 078563 for PCA Counce Mill, state effective June 10, 2021, for incorporation into the Tennessee SIP. These changes were submitted by Tennessee on June 29, 2021. As discussed in more detail in the December 23, 2022 NPRM, these changes to Tennessee's SIP are approved subject to the condition that Tennessee meets its commitment to submit a SIP revision modifying the provisions of TAPCR 1200-03-27.12(11) to specify permissible non-Part 75 alternative monitoring and reporting methodologies, as allowed under 40 CFR 51.121(i)(1) and (4), by 12 months from the date of this final approval. If the State fails to submit this revision on or before 12 months from the date of final approval of this action, the conditional approval will become a disapproval pursuant to CAA section 110(k)(4).

**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 Act and applicable Federal regulations. *See* 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 merely conditionally approves state law as

<sup>1</sup> *See* 62 FR 27968 (May 22, 1997).

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 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 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).
- 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 April 11, 2023. 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) of the CAA.

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

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

Dated: February 2, 2023.

**Daniel Blackman,**

*Regional Administrator, Region 4.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

#### Subpart RR—Tennessee

- 2. Section 52.2219 is added to read as follows:

##### § 52.2219 Conditional approval.

(a) Tennessee submitted a source-specific SIP revision to EPA on June 29, 2021, regarding the Packaging Company of America’s Highway 57, Counce, Tennessee facility, along with a commitment to modify the provisions at Tennessee Air Pollution Control Regulation 1200–03–27.12(11) to specify allowable non-Part 75 permissible alternative monitoring and reporting methodologies for large industrial non-EGUs subject to the NO<sub>x</sub> SIP Call. EPA conditionally approved the June 29, 2021, SIP revision in an action published in the **Federal Register** on February 10, 2023. If Tennessee fails to meet its commitment by February 12, 2024, the conditional approval will become a disapproval on February 12, 2024.

(b) [Reserved]

- 3. In § 52.2220(d), amend the table by adding an entry for “Packaging Corporation of America—Counce Mill” at the end of the table to read as follows:

##### § 52.2220 Identification of plan.

\* \* \* \* \*

(d) \* \* \*

EPA-APPROVED TENNESSEE SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
* * Packaging Corporation of America—Counce Mill	* 078563	* 6/10/2021	* 2/10/2023, [Insert citation of publication].	* * Conditional approval based on TDEC's commitment to modify the provisions at TAPCR 1200-03-27.12(11) to specify allowable non-Part 75 permissible alternative monitoring and reporting methodologies for large industrial non-EGUs subject to the NO <sub>x</sub> SIP Call.

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[FR Doc. 2023-02648 Filed 2-9-23; 8:45 am]

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