



NORTH CAROLINA  
*Environmental Quality*

ROY COOPER  
*Governor*

MICHAEL S. REGAN  
*Secretary*

MICHAEL ABRACZINSKAS  
*Director*

October 29, 2018

Docket ID No. EPA-HQ-OAR-2018-0595

Acting Administrator Andrew Wheeler  
Environmental Protection Agency  
EPA Docket Center (EPA/DC)  
1200 Pennsylvania Ave. NW  
Washington, DC 20460

Subject: Comments on "Emissions Monitoring Provisions in State Implementation Plans Required Under the NO<sub>x</sub> SIP Call" Proposed Rule, EPA-HQ-OAR-2018-0595

Dear Acting Administrator Wheeler:

The North Carolina Division of Air Quality (NCDAQ) is providing comments on the Environmental Protection Agency (EPA) Proposed Rulemaking "Emissions Monitoring Provisions in State Implementation Plans Required Under the NO<sub>x</sub> SIP Call" published in the *Federal Register* on September 27, 2018 (83 *FR* 48751).

The North Carolina Department of Environmental Quality (NCDEQ) protects North Carolina's environment and natural resources by providing science-based environmental stewardship for the health and prosperity of all North Carolinians in administering regulatory and public assistance programs aimed at safeguarding the state's air, water resources, waste management, land resources, coastal fisheries, and the public's health. As the lead agency charged with implementing the Clean Air Act (CAA), the NCDAQ is committed to protecting and improving ambient air quality for the health, benefit, and economic well-being of North Carolina's citizens.

North Carolina has long been a leader in efforts to address air pollution and has made significant reductions in nitrogen oxides (NO<sub>x</sub>) and other emissions through various initiatives including its response to the NO<sub>x</sub> State Implementation Plan (SIP) Call and its Clean Smokestacks Act (CSA) among others. These efforts have resulted in substantial emissions reductions and achieving attainment for all the criteria pollutants, and not significantly contributing to air pollution in other states.

In this proposed rule, EPA is narrowly seeking comment on: (1) revised provisions for states to allow for alternatives to Part 75 continuous emissions monitoring systems (CEMS) for sources



subject to the 1998 NOx SIP Call to address the 1979 1-hour ozone National Ambient Air Quality Standard (NAAQS) by reducing transport of ozone and precursor emissions from upwind states; (2) clarifications including one on remaining requirements related to large non-electric generating units (non-EGUs) previously complying via trading programs and permanent and enforceable emissions reduction; and (3) removal or update of specific obsolete and outdated related requirements.

The NCDAQ offers the following key comments.

First, the NCDAQ is pleased that EPA has undertaken formal rulemaking to provide flexibility to states to allow for alternatives to Part 75 monitoring in their SIPs for non-EGU sources that were included in the NOx SIP Call and associated budget trading program prior to its sunset and later in the Clean Air Interstate Rule (CAIR), but are not subject to the Cross-State Air Pollution Rule (CSAPR) requirements. These programs have not resulted in any meaningful emissions reductions from the affected non-EGU sources and as a result, continuation of costly, legacy monitoring requirements at the level needed for the previous budget trading programs is unwarranted.

Second, regarding the proposed clarification of applicability of 40 CFR 51.121(r)(2) requirement for states to adopt control measures to a state's SIP that "includes *or included*" NOx Budget Trading Program (NBTP) provisions to achieve the required emissions reductions, the <sup>1</sup>NCDAQ interprets this to mean that no action is necessary to affirm the state's obligation to maintain NOx SIP Call emissions control. If this is not correct, the NCDAQ asks EPA to clarify this in their final action. EPA notes in the preamble that the clarification is intended to reinforce the permanent and enforceable nature of the rule's required emission reductions and does not alter any existing regulatory requirements.

It is worth noting that as reflected in North Carolina's 110(l) demonstration<sup>2</sup> of noninterference in support of removing Part 75 monitoring from the non-EGU sources and replacing it with alternative monitoring that was submitted to EPA July 20, 2016:

- Historically, North Carolina's sources have been operating well below the budget allocation.
- The large non-EGU sources participated in the NBTP and were never subject to a limit or cap because the requirement under the budget trading programs was for sources to hold adequate allowances to cover their emissions and the sources could purchase allowances rather than reduce emissions via control.
- The remaining North Carolina NOx SIP non-EGU budget sources are operating, in aggregate, at below the budget allocations for the group.

<sup>1</sup> *Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals* (76 FR 48322-323), August 8, 2011.

<sup>2</sup> *Final Revision to the North Carolina State Implementation Plan NOx SIP Call Transition Requirements for Large Non-EGUs Clean Air Act Section 110(l) Non-Interference Demonstration*, July 20, 2016, <https://deq.nc.gov/about/divisions/air-quality/air-quality-planning/state-implementation-plans/nitrogen-oxides-sip-call-transition-requirements-for-large-non-electrical-generating-units>.



-The affected sources are already required to report NO<sub>x</sub> emissions as part of the state's emissions inventory requirements, New Source Performance Standards, monitoring or Prevention of Significant Deterioration monitoring requirements.

Additional background and specific comments follow below.

## Background

EPA issued the NO<sub>x</sub> SIP Call on October 27, 1998 (63 FR 57356). The NO<sub>x</sub> SIP Call was designed to assist areas in attaining the 1979 1-hour ozone NAAQS, which was revoked effective June 15, 2005, by reducing the transport of ozone and precursor emissions from upwind states. The EPA developed a cap and trade system for NO<sub>x</sub> emissions referred to as the Federal NO<sub>x</sub> Budget Trading Program or NBTP. The NO<sub>x</sub> SIP Call and NBTP were subsequently succeeded by the CAIR and later the CSAPR.

As EPA indicates for large non-EGU sources in the preamble to the current proposal, the NC large non-EGU sources formerly met the NO<sub>x</sub> SIP Call requirements through participation in the NBTP, which was discontinued after 2008. At that time states were provided the option to include the non-EGU sources under the CAIR trading program and NC did so. Subsequently, after CAIR was overturned by the Court, these sources were not allowed to be brought into the trading program under CAIR's successor, the CSAPR, because EPA determined in its own modeling analyses that "as a group, these units did not collectively reduce emissions for the NBTP or CAIR."<sup>3</sup>

The large non-EGU sources are not affected sources and have no federal requirements to monitor or reduce emissions under the more current CSAPR; however, EPA has stated that the anti-backsliding provisions of 40 CFR 51.905(f) require that the provisions of the NO<sub>x</sub> SIP Call, including the statewide NO<sub>x</sub> emission budgets for non-EGUs, be maintained. Furthermore, per EPA, the requirements of the NO<sub>x</sub> SIP Call continue to be permanent and enforceable, including all state regulations developed to implement the requirements of the NO<sub>x</sub> SIP Call. EPA is currently requiring large non-EGUs subject to the 1998 NO<sub>x</sub> SIP Call NBTP to continue complying with the 40 CFR Part 75 CEMS monitoring, recordkeeping and reporting requirements despite the agency's own determination that the sources did not reduce emissions for NBTP or CAIR. The NCDAQ finds EPA's requirements impractical and unnecessary for sources that the EPA, as stated in its own CSAPR preamble, "believes [have] little or no emission reductions available at the cost thresholds used in the final rule and so no basis for developing non-EGUs state budgets reflecting the elimination of significant contribution to nonattainment and interference with maintenance."<sup>4</sup>

Part 75 monitoring requires the use of CEMS which are costly to install and operate. Several of North Carolina's affected non-EGU facilities have notified NCDAQ that their CEMS have

<sup>3</sup> *Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals* (76 FR 48322-323), August 8, 2011..

<sup>4</sup> *Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals* (76 FR 48322-323), August 8, 2011.



reached the end of their useful life, and significant investment in capital is required to replace the existing equipment with new CEMS. Furthermore, many of the instrument parts are out of warranty and are no longer supported by the vendors. Removal of Part 75 requirements would bring economic relief in avoided capital investment, and recurring operating costs associated with replacing unsupported hardware.

When developing both the CSAPR and the CSAPR Update Proposed rulemakings, the EPA did not use the hourly or even the total ozone season CEMS data for non-EGUs. The EPA used the National Emissions Inventory (NEI) data for its ozone transport rulemaking. Since the non-EGU monitoring data is no longer needed to determine compliance with CSAPR, and the EPA does not deem it useful for air quality analysis for this sector, there is no arguable reason for maintaining the costly and burdensome Part 75 monitoring intended to ensure large non-EGU ozone season emissions levels are below the NOx SIP Call budget.

Based on the EPA frequently asked questions (FAQ) guidance providing three options for addressing these NBTP orphan sources, on July 20, 2016, North Carolina submitted a Section 110(l) SIP revision<sup>5</sup> that showed that the NOx SIP Call requirements in the state have been achieved without any emission reductions from non-EGUs, and that their emissions will not interfere with the attainment and maintenance of the NAAQS in North Carolina and neighboring states. The NCDAQ concluded that Part 75 requirements for existing non-EGUs are unnecessary, not beneficial and not cost-effective. Furthermore, the NCDAQ proposed the implementation of an alternative emissions monitoring, reporting and recordkeeping approach which utilized existing applicable reporting requirements contained in the affected sources' current operating permits. As the obligation to ensure the state budget is met lies with the state, the NCDAQ committed as an alternative to annually calculating ozone season NOx emissions to ensure that the total from the group remains below the NOx SIP Call budget.

In the proposal, EPA expressly seeks comment only on the narrow issues of whether the provisions proposed for removal as obsolete in fact are obsolete and whether the proposed clarifications achieve clarification. Following are our additional comments on the specific proposed revisions.

### ***Emissions Monitoring Requirements***

EPA proposes to revise the monitoring provisions of the NOx SIP Call regulation to allow states to include alternatives to 40 CFR Part 75 monitoring of NOx emissions in their SIPs. EPA acknowledges in the preamble that all NOx SIP Call states are now complying with the portions of their statewide emissions budgets assigned to large EGUs and large non-EGU boilers and turbines by substantial margins with the total emissions from sources reaching less than 40% of the sum of the relevant statewide final NOx budgets and no state exceeding 71% of the relevant portion of its budget. EPA also recognizes that Part 75 monitoring would remain in

---

<sup>5</sup> Final Revision to the North Carolina State Implementation Plan NOx SIP Call Transition Requirements for Large Non-EGUs Clean Air Act Section 110(l) Non-Interference Demonstration, July 20, 2016, <https://deq.nc.gov/about/divisions/air-quality/air-quality-planning/state-implementation-plans/nitrogen-oxides-sip-call-transition-requirements-for-large-non-electrical-generating-units>.



place for most large EGUs pursuant to other regulatory requirements such as the Acid Rain Program and CSAPR trading programs.

The NCDAQ concurs with EPA's proposal to amend the NO<sub>x</sub> SIP Call provision at 40 CFR 51.121(i)(4) to make the inclusion of Part 75 monitoring requirements for these sources in SIPs optional rather than mandatory for NO<sub>x</sub> SIP Call purposes. The revised provision at 40 CFR 51.121(i)(4) would allow states to establish monitoring requirements for large EGUs and large non-EGU boilers and turbines in their SIPs other than Part 75 monitoring requirements.

### ***Rescission of Findings of Interstate Pollution Transport Obligations with Respect to the 1997 8-hour Ozone NAAQS***

EPA also proposes to rescind the findings of interstate pollution transport obligations with respect to the 1997 8-hour ozone NAAQS under the NO<sub>x</sub> SIP Call that have been stayed by EPA since 2000. Upon analysis following the remand related to the CSAPR Phase 2 seasonal NO<sub>x</sub> budgets and the subsequent CSAPR update, EPA has determined that the states either had no good neighbor obligation under the NAAQS or that the state's obligation had been fully addressed by CSAPR emissions reduction requirements. EPA also proposes to remove the stay of the findings in 40 CFR 51.121(q), related phrases in 40 CFR 51.121(c)(1) and (c)(2) referencing the 1979 1-hour standard solely to distinguish it from the 1997 8-hour NAAQS as obsolete.

The NCDAQ does not object to rescission of the finding for the 1997 8-hour ozone NAAQS that has been stayed for the past eighteen years and removal of the obsolete references that result given the conclusion of EPA's CSAPR analyses.

### ***Obsolete Provisions***

Other revisions would remove additional obsolete provisions and clarify the remaining regulations but would not substantively alter any current regulatory requirements. EPA seeks comment on whether the provisions proposed for removal as obsolete are indeed obsolete.

### ***Emissions Budget and Emissions Inventory Provisions***

EPA is also proposing to remove obsolete provisions concerning options to revise the NO<sub>x</sub> SIP Call emissions budgets and baseline emissions inventories, options to issue credits supplementing the emissions budgets, and options to comply with the emissions budgets by using the NBTP or state-developed interstate trading programs. An obsolete provision concerning SIP submission procedures would also be removed.

The NCDAQ supports the removal of the obsolete initial implementation provisions regarding options to revise budgets and inventories, issue credit supplements, and comply using the now nonexistent NBTP that was sunset in 2008 and subsequently succeeded by CAIR budgets which were also later overturned.



### *Clarifying Amendments*

The EPA is proposing to make clarifying amendments to the remaining NO<sub>x</sub> SIP Call regulations. Existing regulatory text that the EPA describes as mischaracterizing the incremental emissions reductions required in states' Phase II SIP submissions as "Phase II incremental budget" amounts and "portions of" the final NO<sub>x</sub> budgets would be replaced by simpler text referencing the Phase I and final NO<sub>x</sub> budgets. The EPA notes that the proposed clarifications would not substantively alter any existing regulatory requirements. The EPA also proposes to remove the 40 CFR 51.121(e)(3) table showing incremental Phase II emissions reductions and add a column showing the amounts of the Phase I budget to the existing table in 40 CFR 51.121(e)(2)(i) that already contains the amounts of the final budgets. Further the EPA proposes to modify 40 CFR 51.121(b)(1) and (b)(1)(i) to refer to "each SIP revision" and "the applicable budget" as a reflection of the fact that most states ultimately made separate Phase I and Phase II SIP submittals.

The NCDAQ does not oppose the EPA's relabeling of the Phase II budget and update of the Table to reflect both the initial and final budgets to the extent that it does not substantively adjust the states' budgets.

### *Interstate Trading Program Options*

The EPA is also proposing to clarify the provision at 40 CFR 51.121(r)(2) that sets forth transition requirements applicable to states following discontinuation of the NBTP. Under the CAIR rulemaking the EPA included a provision at 40 CFR 51.121(r)(2) that each state must adopt replacement control measures into its SIP to achieve the same portion of the state's required emissions reductions under the Rule as the state originally projected the NBTP would achieve and included an exception for instances where a state relied on the CAIR seasonal NO<sub>x</sub> trading program. The CSAPR seasonal NO<sub>x</sub> trading program did not provide an option to cover these former NBTP large non-EGU boilers and turbines; however, the EPA merely amended the language to indicate the option to rely on CAIR seasonal NO<sub>x</sub> trading program was expiring. Per the current proposal, in the CSAPR update EPA created a new replacement option authorizing reliance on CSAPR trading to meet NO<sub>x</sub> SIP Call obligations for large non-EGU boilers and turbines, but neglected to amend the language in 40 CFR 51.121(r)(2) to reference the existence of the new option. Now the EPA is proposing to add a new cross reference identifying the current option to rely on CSAPR Update trading program for this purpose. The EPA states that this would not create a new option because it was already authorized under CSAPR update. The EPA proposes to further revise 40 CFR 51.121(r)(2) to expressly apply where a state's SIP "includes or included" trading program provisions to achieve the required emissions reductions. As stated previously, the NCDAQ interprets this to mean that no action is necessary to affirm the state's obligation to maintain NO<sub>x</sub> SIP Call emissions control.



### *Procedural Provisions*

The EPA proposes to eliminate the obsolete requirements including the submission deadlines for Phase I and Phase II SIP submissions, a requirement that submissions satisfy the general completeness criteria in 40 CFR Part 51 Appendix V, and a requirement for five paper copies of SIP revision submittals.

The NCDAQ supports removal of the outdated obsolete deadlines, the general completeness criteria also required elsewhere and requirement for five paper copies of SIP revision submittals.

### *Editorial Revisions*

The EPA proposes to replace the full-text definition of “fossil fuel-fired” at 40 CFR 51.121(i)(5) with a cross-reference to an identical definition at 40 CFR 51.121(f)(3).

The NCDAQ does not object to cross referencing the definition and the other noted minor revisions to reduce redundancy, standardize terminology, and correct editorial errors.

In conclusion the NCDAQ supports providing states flexibility to allow alternatives to Part 75 monitoring for non-EGUs in their NOx SIP Call SIPs. The EPA excluded these sources from the CSAPR rule on the basis that the units did not actually reduce emissions under the NBTP or CAIR and that the agency “believes [have] little or no emission reductions available at the cost thresholds used in the final rule and so no basis for developing non-EGUs state budgets reflecting the elimination of significant contribution to nonattainment and interference with maintenance.”<sup>6</sup> For North Carolina, and other states, as determined by the EPA’s own analysis, no change in emissions has occurred within the large non-EGU sources as a group under the NOx SIP Call trading program in order for states to achieve compliance with their budgets, and the removal of 40 CFR Part 75 monitoring requirement will not interfere with the attainment or maintenance of the NAAQS within North Carolina or its downwind states. As a result, imposing additional control measures for a legacy program above and beyond that necessary to achieve the states’ budgets is unwarranted. *[Next page]*

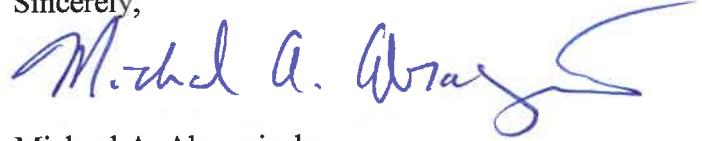
---

<sup>6</sup> *Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals (76 FR 48322-323), August 8, 2011.*



Thank you for the opportunity to comment on this proposed rulemaking. I trust that the comments will be considered as the EPA moves forward to address this matter. If you have any questions regarding our comments, please contact Joelle Burlison, at (919) 707-8720 or [joelle.burlison@ncdenr.gov](mailto:joelle.burlison@ncdenr.gov).

Sincerely,



Michael A. Abraczinskas  
Director, NCDAQ

MAA/jbb

cc: Sheila Holman, NCDEQ  
Bill Lane, NCDEQ  
Asher Spiller, NC Attorney General's Office

