

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52****[EPA-R05-OAR-2008-0389; FRL-8711-3]****Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Approval of Rule Clarifications****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Wisconsin State Implementation Plan (SIP) submitted by the Wisconsin Department of Natural Resources (WDNR) on March 28, 2008. The WDNR has submitted for approval revisions to incorporate Federal regulations into the Wisconsin Administrative Code, to clarify construction permit requirements under general permits, to revise portable source relocation requirements, and to amend rule language to streamline the minor revision permit process to allow construction permits to be issued concurrently with operation permits. EPA is approving these revisions because they are consistent with Federal regulations governing State permit programs.

**DATES:** This direct final rule will be effective December 22, 2008, unless EPA receives adverse comments by November 21, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2008-0389, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: [blakley.pamela@epa.gov](mailto:blakley.pamela@epa.gov).
3. *Fax*: (312) 886-5824.
4. *Mail*: Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery*: Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through

Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2008-0389. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the U.S. 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 a.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Susan Castellanos, Environmental Engineer, at (312) 353-2654 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Susan Castellanos, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), U.S.

Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-2654, [castellanos.susan@epa.gov](mailto:castellanos.susan@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:

- I. What Revisions Did WDNR Submit?
- II. What Action Is EPA Taking on This Submittal?
- III. Statutory and Executive Order Reviews

**I. What Revisions Did WDNR Submit?**

On March 28, 2008, WDNR submitted a SIP revision request to EPA for approval. These revisions incorporate Federal regulations into the Wisconsin Administrative Code, clarify construction permit requirements under general permits, revise portable source relocation requirements, and amend rule language to streamline the minor revision permit process to allow construction permits to be issued concurrently with operation permits.

The submittal requests that EPA approve the following revisions to WDNR's SIP:

(1) To renumber and create NR 400.02(162)(a)49. Wisconsin rule NR 400.02 contains air pollution definitions, and the change will update the definitions to exclude a compound from the list of volatile organic compounds to reflect a rule change made by EPA.

(2) To amend NR 406.04(2m)(b), 406.15(3)(a), and to create 406.04(2m)(b)(note). NR 406 contains construction permit requirements, and the change to NR 406.04 will clarify when a construction permit is needed for sources covered under general operation permits. The change to NR 406.15 amends the numerical emission threshold limitations to language limiting the relocation limitations to less than major source thresholds.

(3) To repeal NR 407.02(6)(b)4 to 7, to amend 407.02(4)(b)27, and 407.10(4)(a)2, and to create 407.02(3e), and 407.10(4)(a)2(note). NR 407 contains operation permit requirements, and the change to NR 407.02 will revise the Federal standards regarding fugitive emissions and permitting standards. The portions of NR 407.02 which are repealed deal with source categories which are no longer required to obtain a Part 70 Title V permit due to rule changes made by EPA. The change to NR 407.10 also clarifies when a construction permit is needed for sources covered under general operation permits.

(4) To amend NR 410.03(4). NR 410 contains air permit, emission, and

inspection fees, and the revisions to NR 410.03 will allow WDNR to bill the applicant for the construction permit fee when the permit is issued, streamlining the process for minor revisions to those permits.

WDNR held a public hearing on June 12, 2007, for these changes. WDNR proposed the rule revisions to the Wisconsin Natural Resources Board for adoption on September 24, 2007, and the Board approved the final rule revisions, which became effective on May 1, 2008.

## II. What Action is EPA Taking on this Submittal?

EPA is approving revisions to Wisconsin's SIP rules NR 400, NR 406, NR 407, and NR 410 submitted by the State on March 28, 2008.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective December 22, 2008 without further notice unless we receive relevant adverse written comments by November 21, 2008. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective December 22, 2008.

## III. Statutory and Executive Order Reviews

Under the Clean Air Act (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 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 December 22, 2008. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 21, 2008.

Lynn Buhl,

Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations 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 YY—Wisconsin

■ 2. Section 52.2570 is amended by adding paragraph (c)(118) to read as follows:

### § 52.2570 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(118) On March 28, 2008, Wisconsin submitted for EPA approval into the Wisconsin SIP a revision to repeal NR 407.02(6)(b)4 to 7; to renumber NR 400.02(162)(a)49; to amend NR 406.04(2m)(b), 406.15(3)(a), 407.02(4)(b)27, 407.10(4)(a)2, and 410.03(4); to create NR 400.02(162)(a)49, 406.04(2m)(b)(note), 407.02(3e), and 407.10(4)(a)2(note), Wis. Admin. Code, effective May 1, 2008. These revisions revise Wisconsin's rules to incorporate Federal regulations into the Wisconsin Administrative Code, to clarify construction permit requirements under general permits, revise portable source relocation requirements, and to amend rule language to streamline the minor revision permit process to allow construction permits to be issued

concurrently with operation permits. EPA has determined that this revision is approvable under the Act.

(i) *Incorporation by reference.* The following sections of the Wisconsin Administrative Code are incorporated by reference:

(A) NR 400.02 Definitions. NR 400.02(162)(a)49 and NR 400.02(162)(a)50, as published in the Wisconsin Administrative Register, April 30, 2008, No. 628, effective May 1, 2008.

(B) NR 406.04 Direct sources exempt from construction permit requirements. NR 406.04(2m)(b) and NR 406.04(2m)(b)(note), as published in the Wisconsin Administrative Register, April 30, 2008, No. 628, effective May 1, 2008.

(C) NR 406.15 Relocation of portable sources. NR 406.15(3)(a), as published in the Wisconsin Administrative Register, April 30, 2008, No. 628, effective May 1, 2008.

(D) NR 407.02 Definitions. NR 407.02(3e), and NR 407.02(4)(b)27, as published in the Wisconsin Administrative Register, April 30, 2008, No. 628, effective May 1, 2008.

(E) NR 407.10 General operation permits. NR 407.10(4)(a)2 and NR 407.10(4)(a)2(note), as published in the Wisconsin Administrative Register, April 30, 2008, No. 628, effective May 1, 2008.

(F) NR 410.03 Application fee. NR 410.03(4), as published in the Wisconsin Administrative Register, April 30, 2008, No. 628, effective May 1, 2008.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2006-0379; FRL-8732-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Reasonably Available Control Technology Requirements for Volatile Organic Compounds and Nitrogen Oxides

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

**ACTION:** Final rule.

**SUMMARY:** EPA is converting its limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania consisting of regulations that require all

major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) to implement reasonably available control technology (RACT) to a full approval as they apply throughout the Commonwealth. In prior final rules, EPA has fully approved Pennsylvania's VOC and NO<sub>x</sub> RACT regulations for the Pennsylvania portion of the Philadelphia-Wilmington-Trenton area, and for the Pittsburgh-Beaver Valley area. The intended effect of this action is to convert EPA's limited approval of Pennsylvania's VOC and NO<sub>x</sub> RACT regulations to full approval as they apply throughout the remainder of the Commonwealth. This action is being taken under the Clean Air Act (CAA or the Act).

**DATES:** *Effective Date:* This final rule is effective on November 21, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2006-0379. All documents in the docket are listed in the <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 <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 Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Marcia Spink, (215) 814-2104, or by e-mail at [spink.marcia@epa.gov](mailto:spink.marcia@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On February 4, 1994, the Pennsylvania Department of Environmental Protection (DEP) submitted a revision to the Pennsylvania SIP, consisting of 25 PA Code Chapters 129.91 through 129.95, to require major sources of NO<sub>x</sub> and major sources of VOC emissions not covered by a CTG (non-CTG sources) to implement RACT. The February 4, 1994 submittal was amended on May 3, 1994 to correct and clarify certain presumptive NO<sub>x</sub> RACT requirements

under Chapter 129.93. On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of 25 PA Code Chapters 129.91 through 129.95, and removed the conditional aspect of the approval on May 3, 2001 (66 FR 22123). On October 16, 2001 (66 FR 52533), EPA published a final rulemaking for the Commonwealth removing the limited status of its approval of 25 PA Code Chapters 129.91 through 129.95 as it applied in the Pittsburgh-Beaver Valley ozone nonattainment area (Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland counties), because EPA had approved all of the case-by-case RACT determinations submitted by DEP for affected major sources of NO<sub>x</sub> and/or VOC sources located in the area. In so doing, EPA converted its limited approval of 25 PA Code Chapters 129.91 through 129.95 to full approval as it applied to that area. That rulemaking became effective on November 15, 2001. On October 30, 2001, (66 FR 54698), EPA published a final rulemaking for the Commonwealth removing the limited status of its approval of 25 PA Code Chapters 129.91 through 129.95 as it applied in the Pennsylvania portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area (Bucks, Chester, Delaware, Montgomery, and Philadelphia counties) because EPA had approved all of the case-by-case RACT determinations submitted by DEP for affected major sources of NO<sub>x</sub> and/or VOC sources located in the area. In so doing, EPA converted its limited approval of 25 PA Code Chapters 129.91 through 129.95 to full approval as it applied to that area. That rulemaking became effective on November 29, 2001.

On August 26, 2008 (73 FR 50267), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed to convert EPA's limited approval of 25 PA Code Chapters 129.91 through 129.95 to full approval as they apply throughout the remainder of the Commonwealth. EPA is converting its limited approval of Pennsylvania's VOC and NO<sub>x</sub> RACT regulations to full approval because EPA has approved all of the case-by-case RACT determinations that had been submitted by Pennsylvania such that there are no longer any such submissions pending before EPA. No public comments were received on the NPR.

##### II. Future Submissions of Case-by-Case RACT Determinations

The DEP has submitted and EPA has approved as SIP revisions case-by-case RACT determinations for nearly 600