



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2007-1179; FRL-9661-5]

**Approval of Air Quality Implementation Plans; Wisconsin;
Disapproval of "Infrastructure" SIP with respect to Oxides of
Nitrogen as a Precursor to Ozone Provisions and New Source
Review Exemptions for Fuel Changes as Major Modifications for
the 1997 8-hour ozone and 24-hour PM_{2.5} NAAQS.**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to EPA's authority under the Clean Air Act (CAA), EPA is proposing to disapprove two narrow portions of submissions made by the Wisconsin Department of Natural Resources (WDNR) to address the section 110(a)(1) and (2) requirements of the CAA, often referred to as the "infrastructure" State Implementation Plan (SIP). Specifically, we are proposing to disapprove the portions of WDNR's submissions intended to meet certain requirements of section 110(a)(2)(C) with respect to the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) and 1997 24-hour PM_{2.5} NAAQS. Among other conditions, section 110(a)(2)(C) of the CAA requires states to correctly address oxides of nitrogen (NO_x) as a precursor to ozone in their respective prevention of

significant deterioration (PSD) programs. EPA is proposing to disapprove a portion of Wisconsin's submissions intended to satisfy this requirement. EPA is also proposing to disapprove a portion of Wisconsin's submissions because the SIP currently contains a new source review (NSR) exemption for fuel changes as major modifications where the source was capable of accommodating the change before January 6, 1975.

DATES: Comments must be received on or before [**insert date 30 days after publication in the Federal Register**].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-1179, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: aburano.douglas@epa.gov.
3. Fax: (312)408-2279.
4. Mail: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Douglas Aburano, Chief, Attainment Planning and Maintenance 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 AM to 4:30 PM, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2007-1179. 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, 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 or e-mail. The www.regulations.gov website 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 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 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 or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang, Environmental Engineer, at (312) 886-0258 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andy Chang, Environmental Engineer, 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) 886-0258, chang.andy@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 should I consider as I prepare my comments for EPA?
- II. What is the background for this action?
- III. What is EPA's evaluation of Wisconsin's infrastructure SIP for the 1997 ozone and 1997 PM_{2.5} NAAQS?
 - A. NO_x as a precursor to ozone provisions.
 - B. Fuel changes as major modifications.
- IV. What action is EPA taking?
- V. Statutory and Executive Order Reviews.
- I. What should I consider as I prepare my comments for EPA?**

When submitting comments, remember to:

- 1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- 2. Follow directions - EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- 3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- 4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background for this action?

Under sections 110(a)(1) and (2) of the CAA, and implementing EPA guidance, states were required to submit either revisions to their existing EPA approved SIPs necessary to provide for implementation, maintenance, and enforcement of the 1997 ozone NAAQS and the 1997 PM_{2.5} NAAQS, or certifications that their existing SIPs for ozone and particulate matter already met those basic requirements. The statute requires that states make these submissions within three years after the promulgation of new or revised NAAQS. However, intervening litigation over the 1997 ozone NAAQS and the 1997 PM_{2.5} NAAQS created uncertainty about how states were to proceed.¹ Accordingly, both EPA and the states were delayed in addressing these basic SIP requirements.

¹ See, e.g., *Whitman v. American Trucking Associations, Inc.*, 531 U.S. 457 (2001).

In a consent decree with Earth Justice, EPA agreed to make completeness findings with respect to these SIP submissions. Pursuant to this consent decree, EPA published completeness findings for all states for the 1997 8-hour ozone NAAQS on March 27, 2008, and for all states for the 1997 PM_{2.5} NAAQS on October 22, 2008.

On October 2, 2007, EPA issued a guidance document entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards," making recommendations to states concerning these SIP submissions (the 2007 Guidance). Within the 2007 Guidance, EPA gave general guidance relevant to matters such as the timing and content of the submissions. Wisconsin made its infrastructure SIP submission for the 1997 ozone and PM_{2.5} NAAQS on December 12, 2007. The State provided supplemental submissions to EPA on January 24, 2011, and March 28, 2011.

On April 28, 2011, EPA published its proposed action on the Region 5 states' submissions (see 76 FR 23757). Notably, we proposed to find that Wisconsin had met the requirements of section 110(a)(2)(C) concerning state PSD programs generally, and in particular the requirement to include NO_x as a precursor to ozone (see 76 FR 23757 at 23760 - 23761), thereby satisfying the requirement that the State has an adequate PSD program

pursuant to section 110(a)(2)(C) for both the 1997 ozone and 1997 PM_{2.5} NAAQS.²

During the comment period for the April 28, 2011, proposed rulemaking, EPA received three sets of comments. Two of the commenters observed that although we had proposed to approve Wisconsin's infrastructure SIP as meeting the correct requirements for NOx as a precursor to ozone in the State's PSD program, Wisconsin's PSD SIP does not contain the most recent PSD program revisions required by EPA for this purpose. One of the commenters also noted that Wisconsin's existing SIP does not meet current EPA requirements with respect to NSR because Wisconsin has not included fuel changes as "major modifications" in its NSR program for certain sources under certain conditions. A detailed discussion of these comments as they relate to Wisconsin's SIP will follow in the section entitled, "What is EPA's evaluation of Wisconsin's infrastructure SIP for the 1997 ozone and 1997 PM_{2.5} NAAQS?"

As a result of the comments, we did not promulgate final action on those two limited aspects of Wisconsin's infrastructure SIP in our July 13, 2011, final rulemaking (see 76 FR 41075). We did, however, promulgate final action on all

² EPA noted that each state's PSD program must meet certain basic program requirements, e.g., if a state lacks provisions needed to address NOx as a precursor to ozone, the provisions of section 110(a)(2)(C) requiring an adequate permitting program must be considered not to be met, irrespective of the pollutant being addressed in the infrastructure SIP submission.

other applicable elements of Wisconsin's infrastructure SIP. In the July 13, 2011, rulemaking, we committed to address the issues raised in the comments concerning NOx as a precursor to ozone and the definition of "major modification" related to fuel changes for certain sources in Wisconsin in a separate action; this proposed rulemaking and future final rulemaking serve as that action.

III. What is EPA's evaluation of Wisconsin's infrastructure SIP for the 1997 ozone and 1997 PM_{2.5} NAAQS?

As stated above, EPA promulgated final action on all applicable elements of Wisconsin's infrastructure SIP submissions for the 1997 ozone and 1997 PM_{2.5} NAAQS except for the narrow issues related to section 110(a)(2)(C) with respect to the current regulatory requirements for NOx as a precursor to ozone in PSD permitting and the definition of "major modification" related to fuel changes for certain sources.³ The following discussion is applicable only to these two unresolved issues for Wisconsin's infrastructure SIP, and will not extend to the elements or requirements of sections 110(a)(1) and (2) for which EPA has previously promulgated final action.

A. NOx as a precursor to ozone provisions.

³ Although the evaluation of states' definitions of "major modification" related to fuel changes was not a criterion outlined in EPA's April 28, 2011 proposed rulemaking, this issue is intrinsically linked to states' PSD regulations, covered under section 110(a)(2)(C).

During the public comment period following EPA's April 28, 2011 proposed rulemaking, commenters disagreed with EPA's proposed conclusion that the SIP for Wisconsin currently meets the requirements for NOx as a precursor for ozone in permitting contexts. The commenters noted that in the proposed rulemaking, EPA stated that Wisconsin's PSD rules include NOx as a precursor to ozone, and that EPA cited the approval of this provision as occurring on May 27, 1999 (see 64 FR 28745). The commenters disagreed with EPA's conclusion that the May 27, 1999, approval, specifically of NR 405.02(21)(a), adequately addresses the issue of inclusion of NOx as a precursor to ozone.

After careful consideration of the comments, we have concluded that the commenters were correct on this point because the current EPA approved SIP for the state does not contain specific SIP revisions for the PSD program required by EPA. On November 29, 2005, EPA published the "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard - Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline" (Phase 2 Rule) (see 70 FR 71612). One aspect of the Phase 2 Rule was the specific requirement to identify NOx as an explicit ozone precursor (see 70 FR 71612 at 71679, 71699-

71700). This requirement was codified in 40 CFR 51.166, and consisted of the following⁴:

40 CFR 51.166 (b) (1) (ii): A major source that is major for volatile organic compounds or NO_x shall be considered major for ozone;

40 CFR 51.166 (b) (2) (ii): Any significant emissions increase (as defined at paragraph (b) (39) of this section) from any emissions units or net emissions increase (as defined in paragraph (b) (3) of this section) at a major stationary source that is significant for volatile organic compounds or NO_x shall be considered significant for ozone;

40 CFR 51.166 (b) (23) (i): Ozone: 40 tons per year of volatile organic compounds or nitrogen oxides;

40 CFR 51.166 (b) (49) (i): Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (e.g., volatile organic compounds and NO_x) are precursors for ozone; and

40 CFR 51.166 (i) (5) (i) (e) footnote 1: No *de minimis* air quality level is provided for ozone. However, any net emissions increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would

⁴ Similar changes were codified in 40 CFR 52.21.

be required to perform an ambient impact analysis, including the gathering of air quality data.

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including these specific NO_x as a precursor to ozone provisions, by June 15, 2007 (see 70 FR 71612 at 71683).

EPA believes that states' SIPs do not meet current structural requirements for the PSD program, and thus do not meet the infrastructure SIP requirements relevant to section 110(a)(2)(C), unless states have made these revisions required in 2007. Thus, states that did not incorporate the changes specific to identifying NO_x as a precursor to ozone required by the Phase 2 Rule were included in EPA's March 27, 2008 "Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS" and received a finding of failure to submit related to section 110(a)(2)(C) for this reason (see 73 FR 16205). Wisconsin was not included in the March 27, 2008 findings notice.

Similarly, consistent with the Phase 2 Rule, EPA has disapproved portions of other states' infrastructure SIPs on the basis that they have not explicitly identified NO_x as a precursor to ozone. Notably, we disapproved the portion of Montana's infrastructure SIP with respect to this requirement of section 110(a)(2)(C) on July 22, 2011 (see 76 FR 43918). EPA

also finalized a partial Federal Implementation Plan (FIP) on August 8, 2011, which included provisions that explicitly include NO_x as a precursor to ozone in the North Coast Unified Air Quality Management District of California (see 76 FR 48006). Likewise, EPA has acted on portions of the SIP submission required by the Phase 2 Rule in conjunction with acting on a state's infrastructure SIP submission. For example, EPA promulgated final approval with respect to South Dakota's revisions to its PSD program identifying NO_x as a precursor to ozone consistent with the requirements of the Phase 2 Rule concurrently with final action on South Dakota's infrastructure SIP for the 1997 ozone NAAQS.⁵

Therefore, based on EPA's own regulations, submission deadlines, and actions germane to the explicit identification of NO_x as a precursor to ozone in Federally approved PSD programs, we are proposing to disapprove the portions of Wisconsin's infrastructure SIP submission with respect to the NO_x as a precursor to ozone provision requirements of section 110(a)(2)(C) for the 1997 ozone and PM_{2.5} NAAQS.

B. Fuel changes as major modifications.

During the comment period following EPA's April 28, 2011, proposed rulemaking, one commenter argued that Wisconsin's

⁵ EPA's proposed action for South Dakota was published on May 12, 2011 (see 76 FR 27622), and our final action for South Dakota was published on July 22, 2011 (see 76 FR 43912).

existing SIP is deficient for purposes of section 110(a)(2)(C) because it does not meet current EPA requirements with respect to the NSR program. The commenter noted that the NSR program requires states to adopt definitions that are identical to, or more stringent than, EPA's definitions. Contrary to EPA's definition, the commenter asserted that Wisconsin has not included fuel changes as "major modifications" in its NSR program. The commenter cited a 2009 letter from EPA to the state requesting that the state update its regulations to address this specific issue.

The definition of "major modification" as it relates to PSD is generally defined in NR 405.02(21) of Wisconsin's SIP. The exemptions to "physical change" are contained at NR 405.02(21)(b). One exemption is the ability of a source capable of accommodating different types of fuels before 1975 to switch the type of fuel burned, unless *strictly prohibited* by a restriction in a permit established after 1975.

EPA regulations contained at 40 CFR 51.166(b)(2)(iii)(e)(1) and (2) specifically prescribe when use of an alternative fuel is not considered a physical change for purposes of defining a "major modification." These regulations require that a physical change or change in the method shall not include use of an alternative fuel or raw material by a stationary source which:

The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR [part 51], subpart I, or 40 CFR 51.166; or

The source is approved to use [the fuel] under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166.

The Wisconsin regulations set out the conditions for the fuel change exemption as follows:

The source was capable of accommodating the alternative fuel or raw material before January 6, 1975, unless the change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to this chapter or ch. NR 406 or 408 or under an operation permit issued pursuant to ch. NR 407.

[Or, t]he source is approved to use the alternative fuel or raw material under any permit issued under this chapter or ch. NR 406, 407, or 408. See proposed NR 405.02(21)(b)5.

The Wisconsin rule is similar to the Federal rule, but differs by substituting references to Wisconsin Administrative Code sections, omitting EPA's phrase "pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR [part 51], subpart I, or 40 CFR 51.166." The commenter objected that failure to cite Federal regulations results in the loss of prohibitions on fuel use exemptions that may have been contained in Federally-issued PSD permits, issued prior to EPA's approval of Wisconsin's PSD SIP. The result, the commenter noted that Wisconsin's rule allows more exemptions to the definition of "major modification" than allowed by the Federal rules.

After careful consideration of the comment, we have concluded that the commenters were correct on this point because the current EPA approved SIP for the state does contain a specific provision that is inconsistent with the NSR program required by EPA. Because this provision is relevant to a structural requirement of the PSD permitting program, EPA believes that this issue affects the approvability of the infrastructure SIP submissions for purposes of meeting the requirements of section 110(a)(2)(C).

EPA notes that this is an issue that has previously arisen and that the State has acknowledged and agreed to address it. The Sierra Club first raised a concern about this issue in the context of EPA's approval of Wisconsin's NSR Reform regulations

on December 17, 2008 (see 73 FR 76560). In that final rulemaking, EPA stated that the definition of "major modification" and the associated fuel use prohibitions were not part of the specific SIP submission being acted upon by EPA at that time. However, we did agree that the language in the Wisconsin SIP needed to be revised (see 73 FR 76560 at 76566).

On June 17, 2009, EPA requested that the State revise its regulatory language in NR 405.02(21)(b)(5) and (6), and NR 408.02(20)(e)(5) and (6), to include permit conditions in Federally-issued permits. On June 1, 2011, WDNR committed to begin the rulemaking process necessary to do so within 120 days by including the requested revision in its next major rulemaking. However, WDNR's commitment did not include a date certain by which it would complete the requested revision of the State's regulations. As a result, EPA may not at this time promulgate an approval or conditional approval of the section 110(a)(2)(C) portion of Wisconsin's infrastructure SIP for the 1997 ozone and PM_{2.5} NAAQS with respect to this narrow issue.

After reviewing Wisconsin's current SIP in light of EPA's own regulations and request to the State to make appropriate revisions to the SIP necessary to address this issue, we are proposing to disapprove Wisconsin's infrastructure SIP submissions for the 1997 ozone and PM_{2.5} NAAQS with respect to the NSR exemption for fuel changes as "major modifications"

where the source was capable of accommodating the change before January 6, 1975. We note that this disapproval is a narrow one, and limited to the specific state regulatory language concerning the exemption.

IV. What action is EPA taking?

EPA is proposing to disapprove two narrow portions of Wisconsin's infrastructure SIP submissions for the 1997 ozone and PM_{2.5} NAAQS with respect to section 110(a)(2)(C). Specifically, we are proposing to disapprove the portions of Wisconsin's submissions because the current SIP does not satisfy the requirements of the Phase 2 Rule for explicit identification of NO_x as a precursor to ozone in PSD permitting. We are also proposing to disapprove the portions of Wisconsin's submissions because the current SIP contains an impermissible NSR exemption for fuel changes as "major modifications" where the source was capable of accommodating the change before January 6, 1975. These grounds for disapproval are narrow, and pertain only to these specific deficiencies in Wisconsin's SIP. We anticipate that the State will be able to rectify these issues readily and we will work with the State to rectify these issues promptly.

Under section 179(a) of the CAA, final disapproval of a submission that addresses a requirement of a Part D Plan (section 171 - section 193 of the CAA), or is required in response to a finding of substantial inadequacy as described in

section 110(k)(5) starts a sanction clock. The provisions in the submissions we are disapproving were not submitted by Wisconsin to meet either of those requirements. Therefore, if EPA takes final action to disapprove these submissions, no sanctions under section 179 will be triggered.

The full or partial disapproval of a SIP revision triggers the requirement under section 110(c) that EPA promulgate a FIP no later than two years from the date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. As previously mentioned, EPA anticipates that WDNR will make a submission rectifying each of these deficiencies. Further, EPA anticipates acting on WDNR's submissions within the two year time frame prior to our FIP obligation on these very narrow issues. In the interim, EPA expects WDNR to treat and explicitly identify NOx as a precursor to ozone for PSD permitting consistent with the requirements of the Phase 2 Rule, and to ensure adherence to the prohibitions on fuel use exemptions in Federally-issued permits.

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. In this case EPA is disapproving two aspects of the Wisconsin SIP that fail to meet Federal requirements.

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review under the Executive Order.

Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities,

small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D, of the CAA will not create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action

will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector." EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism

implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D, of the CAA will not create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary

consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

Consistent with EPA guidance addressing Executive Order 12898, EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental health effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. States' EPA-approved PSD and NSR regulations must meet certain minimum requirements promulgated by EPA, and these regulations apply to all affected populations within the State of Wisconsin. This action proposes to disapprove the portions of Wisconsin's SIP that do not contain certain EPA-promulgated minimum requirements.

Statutory Authority

The statutory authority for this action is provided by sections 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Intergovernmental relations, Ozone, Particulate Matter,
Reporting and recordkeeping requirements.

Dated: April 9, 2012.

Susan Hedman,
Regional Administrator, Region 5.

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