



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2012-0299, FRL-9700-2]

#### **Approval and Promulgation of Implementation Plans; North Dakota: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule; PM<sub>2.5</sub> NSR Implementation Rule**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the North Dakota State Implementation Plan (SIP) relating to regulation of Greenhouse Gases (GHGs) and fine particulate matter (PM<sub>2.5</sub>) under North Dakota's Prevention of Significant Deterioration (PSD) program. This revision was submitted by the North Dakota Department of Health Division of Air Quality (ND DOH DAQ) to EPA on April 18, 2011. It is intended to align North Dakota's regulations with the "PSD and Title V Greenhouse Gas Tailoring Final Rule" and the final rule for "Implementation of the New Source Review (NSR) Program for PM<sub>2.5</sub>." EPA is proposing to approve the revision because the Agency has made the preliminary determination that the SIP revision, already adopted by North Dakota as a final effective rule, is in accordance with the Clean Air Act (CAA or Act) and EPA regulations regarding PSD permitting for GHGs and PM<sub>2.5</sub>.

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

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2012-0299, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- E-mail: [ostendorf.jody@epa.gov](mailto:ostendorf.jody@epa.gov)
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: **Carl Daly**, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop St., Denver, Colorado 80202-1129.
- Hand Delivery: **Carl Daly**, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop St., Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R08-OAR-2012-0299.

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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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

*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 Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays

**FOR FURTHER INFORMATION CONTACT:** Jody Ostendorf, Air Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202-1129, (303) 312-7814, [ostendorf.jody@epa.gov](mailto:ostendorf.jody@epa.gov)

**SUPPLEMENTARY INFORMATION:** Information is organized as follows:

## Table of Contents

- I. What Action is EPA Proposing in Today's Notice?
- II. What is the Background for the PSD SIP Approval Proposed by EPA in Today's Notice?
  - A. GHG-Related Actions
  - B. PM<sub>2.5</sub>-Related Actions
  - C. North Dakota's Actions

III. What is EPA's Analysis of North Dakota's Proposed SIP Revision?

IV. Proposed Action

V. Statutory and Executive Order Reviews

### **I. What Action is EPA Proposing in Today's Notice?**

On April 18, 2011, ND DOH submitted a request to EPA to approve revisions to the State's SIP and Title V program to incorporate recent rule amendments adopted by the ND DOH DAQ. These adopted rules became effective in the North Dakota Administrative Code on that date. Among other things, the amendments establish thresholds for GHG emissions in North Dakota's PSD and Title V regulations at the same emissions thresholds and in the same time-frames as those specified by EPA in the "PSD and Title V Greenhouse Gas Tailoring Final Rule" (75 FR 31514, June 3, 2010), hereinafter referred to as the "Tailoring Rule," ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements for GHGs that they emit. The requested revisions to the SIP will clarify the applicable thresholds in the North Dakota SIP and incorporate state rule changes adopted at the state level into the federally-approved SIP.

The revisions to the SIP also address requirements for PSD programs with regard to emissions of PM<sub>2.5</sub>. These requirements were specified by EPA in the rule, "Implementation of

the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers PM<sub>2.5</sub> (PM<sub>2.5</sub>)” (73 FR 28321, May 16, 2008), hereinafter referred to as the “PM<sub>2.5</sub> NSR Implementation Rule.” In today’s notice, pursuant to section 110 of the CAA, EPA is proposing to approve these revisions into the North Dakota SIP. Approval of Title V program revisions is handled separately because the Title V program is not part of the SIP.

North Dakota also submitted revisions to the General Provisions (Section 33-15-01-04), Ambient Air Quality Standards (Sections 33-15-02-04.1 and 33-15-02-07, and Tables 1 and 2), and Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (Sections 33-15-14-01.9, 10, 12 and 15, 33-15-14-02.1, 33-15-14-02.13 and 33-15-14-03.1.c). In today’s proposed rulemaking, EPA is not proposing to take action on those submittals. EPA will consider those provisions and any proposed or final actions in a rulemaking separate from today’s proposed rulemaking.

## **II. What is the Background for the PSD SIP Approval Proposed by EPA in Today’s Notice?**

This section briefly summarizes EPA’s recent GHG and PM<sub>2.5</sub>-related actions that provide the background for today’s proposed action. More detailed discussion of the background is found in the preambles for those actions. In particular, for GHGs the background is contained in the PSD SIP Narrowing Rule,<sup>1</sup> and in the preambles to the actions cited therein.

### **A. GHG-Related Actions**

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today’s proposed action on the North Dakota SIP. Four of these actions include, as they are

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<sup>1</sup> “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule.” 75 FR 82536 (December 30, 2010).

commonly called, the “Endangerment Finding” and “Cause or Contribute Finding,” which EPA issued in a single final action,<sup>2</sup> the “Johnson Memo Reconsideration,”<sup>3</sup> the “Light-Duty Vehicle Rule,”<sup>4</sup> and the “Tailoring Rule.” Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

PSD is implemented through the SIP system. In December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP Call and, for some of these states, a Federal Implementation Plan (FIP).<sup>5</sup> Recognizing that other states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tons per year (tpy) of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule, EPA issued the PSD SIP Narrowing Rule. Under

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<sup>2</sup> “Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.” 74 FR 66496 (December 15, 2009).

<sup>3</sup> “Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.” 75 FR 17004 (Apr. 2, 2010).

<sup>4</sup> “Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.” 75 FR 25324 (May 7, 2010).

<sup>5</sup> Specifically, by action dated December 13, 2010, EPA finalized a “SIP Call” that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. “Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call,” 75 FR 77698 (December 13, 2010). EPA made findings of failure to submit in some states which were unable to submit the required SIP revision by their deadlines, and finalized FIPs for such states. See, e.g. “Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases,” 75 FR 81874 (December 29, 2010); “Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan,” 75 FR 82246 (December 30, 2010). Because North Dakota’s SIP already authorized North Dakota to regulate GHGs at the Tailoring Rule thresholds once GHGs became subject to PSD requirements on January 2, 2011, North Dakota is not subject to the SIP Call or FIP.

that rule, EPA withdrew its approval of the affected SIPs to the extent those SIPs covered GHG-emitting sources below the Tailoring Rule thresholds. EPA based its action primarily on the “error correction” provisions of CAA section 110(k)(6).

## **B. PM<sub>2.5</sub>-Related Actions**

On May 16, 2008, EPA issued final rules governing the implementation of the New Source Review (NSR) program for particulate matter less than 2.5 micrometers in diameter (PM<sub>2.5</sub>), also known as fine particles. The PM<sub>2.5</sub> NSR Implementation Rule finalized several NSR program requirements for sources that emit PM<sub>2.5</sub> and other pollutants that contribute to PM<sub>2.5</sub>, including; pollutants that contribute to PM<sub>2.5</sub> that are subject to NSR regulations, major source thresholds, significant emissions rates, interpollutant offset trading, revised SIP submittal deadlines and timing of implementation of the rule. The rule requires PSD permits to address directly emitted PM<sub>2.5</sub> as well as pollutants responsible for secondary formation of PM<sub>2.5</sub> as follows:

- Sulfur dioxide (SO<sub>2</sub>) – regulated as a PM<sub>2.5</sub> precursor
- Nitrogen oxides (NO<sub>x</sub>) – regulated as a PM<sub>2.5</sub> precursor unless a state demonstrates that NO<sub>x</sub> emissions are not a significant contributor to the formation of PM<sub>2.5</sub> for an area in the state
- Volatile organic compounds (VOC) – not regulated as a PM<sub>2.5</sub> precursor unless a state demonstrates that VOC emissions are a significant contributor to the formation of PM<sub>2.5</sub> for an area in the state

## **C. North Dakota’s Actions**

On June 21, 2010, North Dakota provided a letter to EPA, in accordance with a request to all states from EPA in the Tailoring Rule, with confirmation that the State of North Dakota has the authority to regulate GHGs in its existing SIP-approved PSD program at the Tailoring Rule thresholds. The letter also confirmed North Dakota’s intent to amend its air quality rules for the

PSD program for GHGs to explicitly match the thresholds set in the Tailoring Rule. See the docket for this proposed rulemaking for a copy of North Dakota's letter.

The rulemaking docket includes a Dec. 14, 2010 memo from EPA Region 8 that documents communications between EPA and the State of North Dakota, with regard to the question of whether the state believed that it needed the PSD SIP Narrowing Rule. The state's 60-day response letter to EPA, dated June 21, 2010, stated, in part, "The Department believes it has existing authority to issue both PSD and Title V permits for sources of greenhouse gases based on the applicability thresholds specified in the tailoring rule." Therefore, the state believed the narrowing rule was unnecessary for North Dakota. As a result, North Dakota was not subject to the PSD SIP Narrowing Rule.

### **III. What is EPA's Analysis of North Dakota's Proposed SIP Revision?**

On April 18, 2011, ND DOH DAQ submitted a revision of its regulations to EPA for processing and approval into the SIP. This SIP revision explicitly adopts the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule. EPA's approval of North Dakota's SIP revision will incorporate the revisions of the North Dakota regulations into the Federally-approved SIP. Doing so will clarify the applicable thresholds in the North Dakota SIP.

The proposed SIP revision establishes thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under North Dakota's PSD program. Specifically, North Dakota's proposed SIP revision includes changes – which are already state effective – to North Dakota's Administrative Code, revising chapter 33-15-15 "Prevention of Significant Deterioration of Air Quality," subsection 33-15-15-01.2 "Scope."

In subsection 33-15-15-01.2, North Dakota implements the PSD program by, for the

most part, incorporating by reference the federal PSD program at 40 CFR 52.21. Under the current SIP, the federal PSD program is incorporated as it existed on August 1, 2007. Under the proposed SIP revision, the federal PSD program as it existed on July 2, 2010 is incorporated by reference. This includes revisions to the federal PSD program that were published as a final rule in the Federal Register by this date but had not yet been published in the Code of Federal Regulations (CFR). The Tailoring Rule, including the necessary revisions to the federal PSD program, was published as a final rule in the Federal Register on June 3, 2010, and on July 1, 2010, the Tailoring Rule revisions to 40 CFR 52.21 were noted in the published version of the CFR. The proposed SIP revision therefore incorporates the PSD requirements of the Tailoring Rule.

Similarly, the revision incorporates, for the most part, the PSD requirements of the PM<sub>2.5</sub> NSR Implementation Rule (promulgated May 16, 2011) as reflected in 40 CFR 52.21, with one exception. North Dakota has modified the language in the definition of “regulated NSR pollutant” at 40 CFR 52.21(b)(5) regarding PM<sub>2.5</sub> precursor presumptions. The modification explicitly establishes that nitrogen oxides are a precursor to PM<sub>2.5</sub> and that volatile organic compounds are not a precursor to PM<sub>2.5</sub>. In other words, the State has not attempted to demonstrate that nitrogen oxides are not a significant contributor to ambient PM<sub>2.5</sub> concentrations or that volatile organic compounds are a significant contributor to ambient PM<sub>2.5</sub> concentrations. This approach is consistent with the PM<sub>2.5</sub> NSR Implementation Rule. Finally, as a result of the updated incorporation by reference, North Dakota has also adopted the clarified definition of “reasonable possibility” promulgated by EPA on December 21, 2007 (72 FR 72607).

North Dakota removed language that had previously been added to 40 CFR 52.21(o)(1)

for two reasons: to make this requirement entirely consistent with federal rules and to provide flexibility to use current methodologies recommended by Federal Land Managers. Chapter 33-15-19 is still applicable to major sources or major modifications under PSD; however, the revised PSD rules in Chapter 33-15-15 do not bind North Dakota to Chapter 33-15-19 for the visibility analysis.

North Dakota is currently a SIP-approved state for the PSD program, and has previously incorporated EPA's 2002 NSR reform revisions for PSD into its SIP. See 72 FR 39564 (July 19, 2007). The changes to North Dakota's PSD program regulations are substantively the same as the federal provisions amended in EPA's Tailoring Rule and PM<sub>2.5</sub> NSR Implementation Rule. As part of its review of North Dakota's submittal, EPA performed a line-by-line review of North Dakota's proposed revision and has preliminarily determined that it is consistent with the Tailoring Rule and PM<sub>2.5</sub> NSR Implementation Rule.

#### **IV. Proposed Action**

Pursuant to section 110 of the CAA, EPA is proposing to approve North Dakota's April 18, 2011 revisions to the North Dakota SIP, relating to PSD requirements for GHG- and PM<sub>2.5</sub>-emitting sources. Specifically, North Dakota's proposed SIP revision establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. The proposed SIP revision also satisfies PSD requirements for treatment of PM<sub>2.5</sub> in accordance with EPA's PM<sub>2.5</sub> NSR Implementation Rule. As a result, EPA has made the preliminary determination that this SIP revision is approvable.

#### **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 Act 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 proposed action merely approves some state law as meeting federal requirements and disapproves other state law because it does not meet federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 (Public Law 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.

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

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

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

Dated: July 3, 2012.

James B. Martin,  
Regional Administrator,  
Region 8.

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