



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2008-0402; FRL-\_9834-4]**

**Approval and Promulgation of Air Quality Implementation Plans;  
Wisconsin; Permit Exemption Rule**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving revisions to the Wisconsin State Implementation Plan (SIP) submitted by the Wisconsin Department of Natural Resources (WDNR) on April 23, 2008. WDNR submitted revisions exempting certain sources of air pollution from construction permit requirements. EPA is approving these revisions because they are consistent with Federal regulations governing state permit programs.

**DATES:** This final rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2008-0402. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, 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 [www.regulations.gov](http://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 Andrea Morgan, Environmental Engineer, at (312) 353-6058 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Andrea Morgan, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6058, [morgan.andrea@epa.gov](mailto:morgan.andrea@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 Is Being Addressed in this Document?
- II. What Comments Did We Receive on the Proposed Rule?
- III. What Action Is EPA Taking?
- IV. Statutory and Executive Order Reviews.

**I. What Is Being Addressed in this Document?**

On May 15, 2013, at 78 FR 28547, EPA proposed to approve a SIP revision from Wisconsin exempting certain sources of air pollution from the requirement to obtain a construction permit. Sources with actual emissions of under 10 tons per year (tpy) of each criteria pollutant, particulate matter of 10 micrometers or less, sulfur dioxide, nitrogen oxides, carbon monoxide and volatile organic compounds, and less than 0.5 tpy of lead, and that are not subject to Federal air pollution requirements for hazardous air pollutants under section 111 or 112 of the Clean Air Act (Act) will be eligible for the exemption. The revisions will also exempt construction or modification projects that emit less than 1,666 pounds of criteria pollutants per month, averaged over a 12 consecutive month period, and less than 10 pounds of lead per month, averaged over a 12 consecutive month period from construction permitting requirements. EPA believes that the revisions to Wisconsin's SIP meet Federal requirements and will not interfere with attainment or reasonable further progress. As set forth in the proposed rule, this SIP revision satisfies the anti-backsliding provisions of section 110(1) of the Act.

## **II. What Comments Did We Receive on the Proposed Rule?**

EPA provided a 30-day review and comment period. The comment period closed on June 14, 2013. EPA received one comment supporting EPA's approval of these revisions. EPA received no adverse comments.

### **III. What Action is EPA Taking?**

EPA is approving Wisconsin's April 23, 2008, SIP submittal and March 25, 2013 supplement to the submittal. Specifically, EPA is approving the following revisions to WDNR's SIP: (1) renumber and create NR 406.02(1) and 406.04(4)(h); (2) create NR 406.04(1)(zh), NR 406.04(1q), NR 406.04(4)(i), NR 407.03(1m), and NR 410.03(1)(f); and (3) amend NR 410.03(1)(d). Wisconsin's submittal originally contained revisions to NR 407, which pertain to operation permit requirements. However, in the March 25, 2013, supplement to the submittal, Wisconsin withdrew the NR 407 revisions from the submittal.

### **IV. Statutory and Executive Order Reviews.**

Under the Act, 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 Act. 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 (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 Act; 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 the Congress and to the Comptroller General of the United States. EPA will

submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. 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: July 2, 2013

Susan Hedman,  
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

**PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

2. Section 52.2570 is amended by adding paragraph (c) (127) to read as follows:

**§ 52.2570 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(127) On April 23, 2008 and March 25, 2013, the Wisconsin Department of Natural Resources submitted a request to revise Wisconsin's air permitting program to exempt certain small sources of air pollution from construction permitting requirements.

**(i) Incorporation by reference.**

(A) Wisconsin Administrative Code, NR 406.02 Definitions. NR 406.02(1) "Clean fuel", and NR 406.02(1m) "Facility", as published in the Wisconsin Administrative Register May 2007, No. 617, effective June 01, 2007.

(B) Wisconsin Administrative Code, NR 406.04 Direct sources exempt from construction permit requirements. NR 406.04(1)(zh), NR 406.04(1q), NR 406.04(4)(h), NR 406.04(4)(i), and NR

406.04(4)(j), as published in the Wisconsin Administrative Register May 2007, No. 617, effective June 01, 2007.

(C) Wisconsin Administrative Code, NR 410.03 Application fee. NR 410.03(1)(d), and NR 410.03(1)(f), as published in the Wisconsin Administrative Register May 2007, No. 617, effective June 01, 2007.

[FR Doc. 2013-18417 Filed 07/31/2013 at 8:45 am; Publication Date: 08/01/2013]