



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2016-0603; FRL-9964-62-Region 5]**

**Air Plan Approval; Minnesota; Prevention of Significant  
Deterioration**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Minnesota State Implementation Plan (SIP) submitted on October 4, 2016. EPA is proposing to approve the state's Prevention of Significant Deterioration (PSD) rules which incorporate the Federal PSD rules by reference.

**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-R05-OAR-2016-0603 at <http://www.regulations.gov>, or via email to [damico.genevieve@epa.gov](mailto:damico.genevieve@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Rachel Rineheart, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7017, [rineheart.rachel@epa.gov](mailto:rineheart.rachel@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. Review of State Submittal

II. Effects of Moving from Delegation to SIP Approved Program

III. What Action is EPA Taking?

IV. Incorporation by Reference

V. Statutory and Executive Order Reviews

#### **I. Review of State Submittal**

Section 110(a)(2)(C) of the Clean Air Act (CAA) requires that each SIP include a program to provide for the regulation of construction and modification of stationary sources, including a permit program as required by part C of subsection I of the CAA - Prevention of Significant Deterioration of Air Quality.

Specific plan requirements for an approvable PSD SIP are provided in sections 160-169 of the CAA and the implementing regulations at 40 CFR 51.166. The Federal PSD program is codified at 40 CFR 52.21. Minnesota does not have an approved PSD SIP at this time and has issued PSD permits pursuant to a delegation of the Federal PSD rules at 40 CFR 52.21.

On October 4, 2016, MPCA submitted a request to revise the Minnesota SIP to include Minn. R. 7007.3000, which incorporates 40 CFR 52.21 by reference. MPCA provided further clarification with respect to program implementation in a letter dated June 1, 2017. MPCA will not implement 40 CFR 52.21(g), (s), (t) and (u). The provisions at 40 CFR 52.21(g), (s), (t) and (u) have

no corresponding requirements in 40 CFR 51.166. 40 CFR 52.21 (g) contains procedures by which states may request EPA redesignate areas to different air quality classifications. The authority to redesignate air quality classifications is an authority of the EPA Administrator. The June 1, 2017, letter clarifies that MPCA does not intend to implement this paragraph and that the authority to implement the paragraph remains with the EPA Administrator. 40 CFR 52.21(s) requires a Federal action associated with a PSD project to be coordinated with an associated Federal environmental impact statement. Once a PSD program has been approved into the SIP, PSD permits will be issued under state authority and will no longer be considered Federal actions. 40 CFR 52.21(t) describes the process to resolve disputes over a redesignation or a permit. This is an authority of the EPA Administrator. The June 1, 2017, letter clarifies that MPCA does not intend to implement this paragraph and that the authority to implement the paragraph remains with the EPA Administrator. 40 CFR 52.21(u) authorizes the Administrator to delegate the PSD program. The June 1, 2017, letter clarifies that MPCA does not intend to implement this paragraph and that the authority to implement the paragraph remains with the EPA Administrator. Finally, as described in

the June 1, 2017, clarification letter, the requirements in Minn. R. 7007.0700(B) for the completeness review and Minn. R. 7007.0850, subp. 2 for public notice requirements, which have already been approved into the SIP, will supersede the public participation requirements of 40 CFR 21.21(q).

Minn. R. 7007.3000 incorporates 40 CFR 52.21, as amended, by reference, and became effective on November 26, 2007, but was not submitted to EPA for review and approval into the SIP at that time. MPCA published its intent to submit Minn. R. 7007.3000 to EPA for incorporation into the Minnesota SIP as the PSD program in the Minnesota State Register on June 20, 2016. A 30-day comment period and opportunity for a public hearing was provided. The public participation requirements at Minn. R. 7007.0700(B) and 7007.0850, subp. 2, were approved into the Minnesota SIP on May 24, 1995. (See 60 FR 27411.)

Section 110(k)(3) of the CAA states that the Administrator "shall approve" a submittal from a State if it "meets all applicable requirements" of the CAA. EPA has reviewed Minn. R. 7007.3000, Minn. R. 7007.0700(b) and Minn. R. 7007.0850, subp. 2, and has determined that these rules meet the requirements of sections 160-169 of the CAA and the requirements of 40 CFR 51.166.

## **II. Effects of Moving from Delegation to SIP Approved Program**

Upon approval of Minnesota's PSD SIP, EPA will continue to oversee implementation of this program by reviewing and commenting upon draft permits. EPA will continue to comment on any failure to follow the law, as well as EPA's statutory and regulatory interpretations and applicable guidance. If a final PSD permit still does not reflect consideration of the relevant factors, EPA will deem the permit to be not in conformance with the PSD requirements of the CAA and state's SIP, and will consider appropriate enforcement action under sections 113 and 167 of the CAA to address the permit deficiency. However, there are certain provisions that will no longer apply. These include opportunity to appeal a decision to issue a PSD permit to EPA's Environmental Appeals Board (EAB), consultation under section 7 of the Endangered Species Act (ESA), and consultation under section 106 of the National Historic Preservation Act (NHPA).

Permits issued pursuant to a delegation are Federal actions. As Federal actions, EPA is required to consult with the appropriate agencies under section 7 of the ESA and section 106 of the NHPA on any action that may affect a threatened or endangered species or historic property respectively. If EPA approves the Minnesota PSD program into the SIP, PSD permits

will no longer be Federal actions; therefore, consultation under ESA and NHPA will not occur. Sections 9 and 10 of the ESA would still apply, and any project that could result in the taking of a listed species would require a permit under section 10 of the ESA. It would be the source's obligation to obtain the necessary permit from the appropriate agency, which in the case of species listed in Minnesota, would be the United States Fish and Wildlife Service.

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

EPA is proposing to approve the request made by MPCA on October 4, 2016, to revise the Minnesota air rules in the Minnesota SIP. EPA is proposing to approve Minn. R. 7007.3000 as meeting the requirements of section 110 and sections 160-169 of the CAA, and the programmatic requirements of 40 CFR Part 51.166 for an approvable PSD program. The approval will not apply to sources located within Indian country as defined at 18 U.S.C. 1151.

### **IV. Incorporation by Reference**

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Minn. R. 7007.3000 Prevention of

Significant Deterioration of Air Quality, effective November 26, 2007. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov), and/or at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

#### **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. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: June 26, 2017.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

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