



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R07-OAR-2019-0666; FRL-10003-76-Region 7]**

**Air Plan Approval; Nebraska; Lincoln-Lancaster County Health Department (LLCHD)**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the State Implementation Plan (SIP) submitted by the State of Nebraska that addresses the authority of the Lincoln-Lancaster County Health Department (LLCHD). This proposed action will amend the Nebraska SIP by removing a portion of the SIP that addresses the authority of LLCHD regarding the Prevention of Significant Deterioration (PSD) Program; specifically: Article 2. Section 19. Prevention of Significant Deterioration of Air Quality (PSD) Lincoln-Lancaster County Health Department (LLCHD). This SIP revision will have no impact to air quality and eliminate confusion regarding the authority to issue PSD permits in Lancaster County.

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

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-R07-OAR-2019-0666 to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Written Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** William Stone, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551-7714; email address [stone.william@epa.gov](mailto:stone.william@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," and "our" refer to the EPA.

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## **I. Written Comments**

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2019-0666, at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from Regulations.gov. The 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. The 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

## **II. What is Being Addressed in this Document?**

The EPA is proposing to approve a revision to Nebraska's SIP received from the State of Nebraska on July 23, 2019. Specifically, the EPA is proposing to amend the Nebraska SIP by

removing a portion of the SIP as follows: Article 2. Section 19. Prevention of Significant Deterioration of Air Quality (PSD) Lincoln-Lancaster County Health Department (LLCHD).

On February 14, 1996, the EPA approved SIP revisions submitted by the State of Nebraska on behalf of the LLCHD (61 FR 5699, February 14, 1996). This submittal included a complete copy of the state's air regulations that LLCHD had adopted as its own. Although the LLCHD's adoption of the State's rules included the PSD regulation, the action by the EPA did not create or acknowledge a PSD program separate and apart from the State of Nebraska's EPA-approved PSD program.

This incorporation by reference of the LLCHD Air Pollution Control Program, specifically ARTICLE 2. SECTION 19. PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY has created confusion about the authority to issue PSD permits in Lancaster County, Nebraska.

PSD authority in Lancaster County, Nebraska was addressed in three documents around the time of this SIP action by both EPA and the State of Nebraska. Those documents are (1) the preamble to the direct final rule, (2) the Technical Support Document (TSD) that accompanied the proposal, and (3) a letter from the Nebraska Department of Environmental Quality (NDEQ), now the Nebraska Department of Environment and Energy (NDEE), to

EPA Region 7 dated *November 9, 1995*. PSD authority in Lancaster County, Nebraska was also addressed in a delegation letter from NDEQ to LLCHD. Each of these documents is available as part of this docket.

Per the preamble to the direct final rule (61 FR 5700, February 14, 1996), the EPA herein notes that only the State program includes an approved part 51 program to issue PSD permits.

On Page 5 of the TSD EPA states:

*[A]lthough the local agencies' adoption of the state's rule include Prevention of Significant Deterioration (PSD) regulations, the EPA herein notes that only the state program includes an approved part 51 program to issue PSD permits. As part of the Class II program, the local agencies will act as agents of the state to administer and enforce requirements applicable under PSD, although only the state will actually issue these permits. This is identified in letter from NDEQ dated November 9, 1995.*

*(TSD for Nebraska SIP revisions, November 20, 1995).*

In a letter from NDEQ to EPA Region 7, referred to in the TSD above, NDEQ states:

*[A]lthough the local agencies adoption of the Title 129 includes PSD regulations which were submitted as part of the request for approval, only the state program includes an approved part 51 program to issue PSD permits. As part of the Class II program, the local agencies will act as*

*agents of the state to administer and enforce requirements applicable under PSD, although only the state will actually issue these permits... (Letter from Joe Francis, Assistant Director, NDEQ, to Art Spratlin, EPA Region 7, LLCHD, November 9, 1995).*

In a letter from NDEQ to LLCHD dated December 31, 1997, NDEQ responds to LLCHD's request to delegate authority to implement and enforce the PSD program. NDEQ delegates the authority to LLCHD to implement and enforce all provisions of NDEQ title 129 chapter 19 with conditions including:

- 1. Each PSD permit issued by LLCHD shall state that the permit is an NDEQ permit and is being issued pursuant to this delegation;*

2. Each permit issued by LLCHD pursuant to this delegation shall include the following statement immediately above the signature block: Pursuant to the December 31, 1997

Delegation Letter, signed by the Director of the Department of Environmental Quality, the undersigned hereby executes this document on behalf of the director of the department.

3. Each permit issued by LLCHD pursuant to this delegation shall state the permit is being issued pursuant to Title 129 - Nebraska Air Quality Regulations (Title 129), Chapter 19, and is subject to all terms and conditions of Title 129 and the Nebraska Revised Statutes;

5. LLCHD shall follow the public participation and decision-making procedures in Title 129, Chapter 19, section 004 and shall transmit documents and notifications to the EPA, as required by section 005, and to the NDEQ;

The December 31, 1997 letter from NDEQ to LLCHD continues with "If the director of the NDEQ determines that the LLCHD's implementation of the PSD regulations is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part..." (Letter from Randolph Wood, Director, NDEQ to Gregg Wright Interim Director, LLCHD, December 31, 1997).

These documents demonstrate that all PSD permits issued in the State of Nebraska, including those issued in Lancaster County, are issued by the State of Nebraska under title 129, chapter 19 PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY (PSD). The SIP revision being proposed for approval by this action removes a redundant regulation from the SIP and will have no effect on air permitting or air quality in Lancaster County, Nebraska.

### **III. Have the Requirements for Approval of a SIP Revision Been Met?**

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided a public comment period for this SIP revision from May 20, 2019 to June 21, 2019, and at the same time, offered an opportunity for a public hearing. No comments or request for public hearing were received.

### **IV. What Action is the EPA Taking?**

The EPA is proposing to amend the Nebraska SIP by removing LLCHD Article 2. Section 19. Prevention of Significant Deterioration of Air Quality (PSD). The removal of this portion of the SIP will not impact air quality because the regulation duplicates the State's regulation, which applies in the same jurisdiction.

We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

#### **V. Incorporation by Reference**

In this document, the EPA is proposing to amend regulatory text that includes incorporation by reference. As described in the proposed amendments to 40 CFR part 52 set forth below, the EPA is proposing to remove provisions of the EPA-Approved Nebraska Regulations from the Nebraska State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

#### **VI. 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, the 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- 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 the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; 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).

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,  
Incorporation by reference, Intergovernmental relations.

Dated: December 23, 2019.

James Gulliford,  
Regional Administrator,  
Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

**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.*

**Subpart-CC Nebraska**

§52.1420 [Amended]

2. In §52.1420, amend the table in paragraph (c) by removing the entry "Section 19 Prevention of Significant Deterioration of Air Quality" under the headings "Lincoln-Lancaster County Air Pollution Control Program", "Article 2-Regulations and Standards".

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