



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2008-0784; FRL-10011-77-Region 5]

Air Plan Approval; Wisconsin; PSD and Nonattainment NSR Rule clarifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Wisconsin state implementation plan (SIP), submitted by the Wisconsin Department of Natural Resources (WDNR) on September 30, 2008. The revision updates the definition of "Replacement Unit" and clarifies a component of the emission calculation used to determine emissions under a plantwide applicability limitation (PAL) in the Wisconsin Administrative Code. Approving this revision makes Wisconsin rules consistent with Federal rules.

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-2008-0784 at <http://www.regulations.gov>, or via email to damico.genevieve@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.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: Michael Cloyd, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)886-1474, Cloyd.Michael@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID 19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA...

I. Review of Wisconsin's Submittal

This action proposes to approve the request EPA received on September 30, 2008 from WDNR to incorporate changes made by EPA to 40 CFR parts 51 and 52, effective on January 6, 2004 (68 FR 63021). As a result of petitions for reconsideration, EPA added two clarifications of underlying rules. EPA updated the definition of "Replacement Unit" to clarify that a replacement

unit is reconstructed or takes the place completely of the unit being replaced, the replacement unit is functionally identical to the old unit, a replacement unit cannot change the design parameters of the existing process, and the replaced unit has to be permanently removed or rendered permanently unusable. In addition, EPA clarified that the PAL baseline calculation procedures for newly constructed units do not apply to modified units. Modified or existing units are not considered newly constructed units and therefore do not need to be added to the PAL level for the 24-month emissions period.

Wisconsin's submittal includes revisions to its SIP to incorporate these changes. Wisconsin's rules are consistent with the January 6, 2004 definition of "Replacement Unit" and clarification of calculations for PAL (November 7, 2003, 68 FR 63021).

II. What Action is EPA Taking?

EPA is proposing to approve updates and revisions to Wisconsin's air quality SIP. Specifically, EPA is proposing to approve updates to the definition of "Replacement Unit" under NR 405.02(12)(b), NR405.02(25k), and NR 408.02(29s), and is approving a revision to a component of the emission calculation used to determine emissions under a PAL under NR 405.18(6)(e) and NR 408.11(6)(e).

III. 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 Wisconsin Administrative Code

provisions NR 405.02(12)(b), 405.18(6)(e), NR 405.02(25k), NR 408.02(29s) and NR 408.11(6)(e), as published in the Wisconsin Register, July, 2008, No. 631 and state effective August 1, 2008. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

VI. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air 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 Clean Air 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 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 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 Clean Air 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, 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: November 3, 2020.

Kurt Thiede,
Regional Administrator,
Region 5.

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