



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA-R08-OAR-2021-0267; FRL-10024-01-Region 8]

Clean Air Act New Source Review Operating Permit Program; Notice of Transfer of Permits to Wyoming Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is granting Wyoming Department of Environmental Quality's (WDEQ) August 21, 2020 request to transfer to the State administrative authority over two existing federal permits that were issued by the EPA on June 26, 1973 under the federal new source review (NSR) permitting program. In addition, the EPA is agreeing with WDEQ's analysis in its August 21, 2020 letter demonstrating that the current Wyoming regulations still meet the requirements of the federal NSR permitting program. This action transfers the 1973 federally issued permits to Wyoming. The EPA is taking this action in accordance with the Clean Air Act (CAA) and the Code of Federal Regulations NSR program requirements. This is a direct final action because the action is deemed noncontroversial.

DATES: This rule is effective on **[insert date 60 days after date of publication in the Federal Register]** without further notice, unless the EPA receives adverse written comments on or before **[insert date 30 days after date of publication in the Federal Register]**. If adverse comments are received, the EPA will publish a timely withdrawal in the *Federal Register* informing the public that this rule will not take effect.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2021-0267. All documents in the docket are listed in the 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 electronically in www.regulations.gov. To reduce the risk of COVID-19 transmission, for this action we do not plan to offer hard copy review of

the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Donald Law, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-PM, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-7015, *law.donald@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” mean the EPA.

I. Why is EPA Using a Direct Final Rule?

The EPA is publishing this rule without prior proposal because the Agency views this action as noncontroversial and anticipates no adverse comments. However, in the Proposed Rules section of today’s *Federal Register* publication, the EPA is publishing a separate document that will serve as the proposal to grant WDEQ’s request to transfer to the State administrative authority over two federal permits if the EPA receives adverse comments. This rule will be effective on **[insert date 60 days after date of publication in the Federal Register]** without further notice unless we receive adverse comments by **[insert date 30 days after date of publication in the Federal Register]**. If the EPA receives adverse comments, the EPA will publish a timely withdrawal in the *Federal Register* informing the public that this direct final rule will not take effect. The EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. Background

On April 30, 1971, the EPA Administrator promulgated national ambient air quality standards (NAAQS) for several pollutants.¹ The EPA’s action triggered requirements for states to adopt and submit plans to the EPA providing for the implementation, maintenance and enforcement of those

¹ 36 FR 8186.

NAAQS within their state borders.² The EPA also promulgated regulations prescribing the requirements for the preparation, adoption and submittal of state plans.³

On January 26, 1972, Wyoming submitted its state implementation plan (SIP) to the EPA, followed by plan supplements on March 28 and May 3, 1972. On May 31, 1972, the EPA approved parts of Wyoming's SIP and disapproved other parts. The EPA found that Wyoming did not demonstrate that it had the legal authority to carry out its SIP as required under 40 CFR 51.11(a)(4)(1972)⁴ to prevent the construction of new sources and the modification of existing sources, and that Wyoming did not include legally enforceable procedures to prevent the construction of a new source or modification of an existing source under 40 CFR 51.18(1972)⁵, Review of New Sources and Modifications. On September 22, 1972, the EPA added paragraph (b) to 40 CFR 52.2625(1972)⁶ to provide for federal review of new sources and modifications of sources in Wyoming.⁷

On July 26, 1973, the EPA approved two trona (trisodium hydrogendicarbonate dihydrate) plant facility expansion applications and issued permits under 40 CFR 52.2625(b)(1972), each bearing the same permit number of "8A-EE." One permit was originally issued to Allied Chemical Corporation and is now held by TATA Chemicals Soda Ash Partners, and the other permit was originally issued to FMC Corporation and is now held by Genesis Alkali Wyoming, LP.

On June 10, 1975, the EPA approved Wyoming's NSR regulations finding that Wyoming's NSR regulations satisfied the requirements of 40 CFR 51.18 for direct sources.^{8,9} In the 1975 *Federal Register* document, the EPA also withdrew the federal NSR program under 40 CFR 52.2625(b)(1972).

² See 42 U.S.C. 7410.

³ See 36 FR at 15486 (Aug. 14, 1971), 20513 (Oct. 23, 1971), and 25233 (Dec. 30, 1971).

⁴ Part 51 has since been revised and 40 CFR 51.11(a)(4)(1972) has been deleted. See https://www.ecfr.gov/cgi-bin/text-idx?SID=d5a8b4c159130810aa406765662e57a9&mc=true&tpl=/ecfrbrowse/Title40/40cfr51_main_02.tpl for current version. See the docket for the 1972 CFR version of this provision.

⁵ Part 51 has since been revised and 40 CFR 51.18(1972) has been deleted. See https://www.ecfr.gov/cgi-bin/text-idx?SID=d5a8b4c159130810aa406765662e57a9&mc=true&tpl=/ecfrbrowse/Title40/40cfr51_main_02.tpl for current version. See the docket for the 1972 CFR version of this provision.

⁶ Part 52 has since been revised and 40 CFR 52.2625(1972) has been deleted. See https://www.ecfr.gov/cgi-bin/text-idx?SID=3d6071d443b4700a12af6eb2b751a68c&mc=true&node=se40.5.52_12625&rgn=div8 for the current version. See the docket for the 1972 CFR version of this provision.

⁷ 37 FR 19806.

⁸ 40 FR 24726.

⁹ The EPA did not find that Wyoming's new source review procedures for indirect sources met the requirements of 40 CFR 51.18.

The 1975 federal rulemaking was silent on the existing federal permits issued under the now superseded federal NSR program for Wyoming under 40 CFR 52.2625(b)(1972).

In an August 21, 2020 letter, WDEQ requested the EPA transfer to the State administrative authority over two existing federal permits that were issued by the EPA on June 26, 1973 under the federal NSR permitting program.^{10, 11} In its letter, as well as in Wyoming's 1975 approved SIP, WDEQ outlined how its stationary source permitting rules in Chapter 6, section 2 of the Wyoming Air Quality Rules and Regulations provide WDEQ with the authority to administer air permits, including the two 8A-EE permits originally issued by the EPA. Specifically, the provisions of Chapter 6, section 2 satisfy all the requirements of 40 CFR 51.18 for federally approved permit programs as the EPA previously determined in order to have granted Wyoming authority for implementation of the NSR program. WDEQ has authority to issue permits and impose conditions in those permits in order to ensure the maintenance or attainment of national and state ambient air quality standards. In addition, WDEQ also has authority to enforce these permits under Wyoming Statutes Annotated 35-11-901.

III. EPA Evaluation

In its August 21, 2020 letter, WDEQ requested that EPA formally transfer authority to WDEQ for the two July 26, 1973 permits issued under the federal NSR program at 40 CFR 52.2625(b)(1972) based upon the EPA's 1975 approval of Wyoming's NSR program and deletion of the federal NSR program as well as a demonstration that Wyoming's current regulations still meet the requirements of a federally approved permit program as required under 40 CFR 51.11(a)(4) and 51.18. WDEQ's request for the transfer of the federally-issued permits under 40 CFR 52.2625(b)(1972) to Wyoming includes the request to transfer the authority to conduct general administration of these existing permits, authority to process and issue any and all subsequent permit actions relating to such permits (e.g. modifications, amendments, or revisions of any nature) and authority to enforce such permits.

¹⁰ Letter dated August 21, 2020, from Nancy E. Vehr, Director, Wyoming Air Quality Division, WDEQ, to Carl Daly, Acting Director, Air and Radiation Division, EPA, Region 8, Subject: "Permits 8A-EE issued on July 26, 1973 to Allied Chemical Corporation and to FMC Corporation."

¹¹ 40 CFR 52.2625(b) (1972).

In its August 21, 2020 letter, WDEQ provided that Wyoming’s stationary source permitting rules contained within its SIP including Chapter 6, section 2 of the Wyoming Air Quality Rules and Regulations, provide WDEQ the authority to administer all permits, including the two 8A-EE permits originally issued by the EPA. Chapter 6, section 2 of the Wyoming Air Quality Rules and Regulations authorizes WDEQ to issue permits and impose conditions in those permits in order to ensure the maintenance or attainment of national and state ambient air quality standards which the EPA approved in 1975.¹² WDEQ has authority to enforce these permits under Wyoming Statutes Annotated 35-11-901. This is in keeping with the requirements of 40 CFR 51.18 which requires state programs to have the ability to impose permit conditions to maintain the national and state ambient air quality standards. We agree with the State’s findings that Chapter 6, section 2 continues to satisfy the requirements of 40 CFR 51.18.

In addition, Wyoming asserts that Wyoming’s Chapter 6, section 2(c)(ii) requirements satisfy the requirements of 40 CFR 51.11(a)(4) and 51.18(a). Wyoming’s Chapter 6, section 2(c)(ii) states that “[n]o approval to construct or modify will be granted unless the applicant shows, to the satisfaction of the Administrator of the Division of Air Quality that...the proposed facility will not prevent the attainment or maintenance of any ambient air quality standard.” Under 40 CFR 51.18(a), plans are required to set forth legally enforceable procedures to be used to implement the provisions of 40 CFR 51.11(a)(4). 40 CFR 51.11(a)(4) provides that the permitting entity must have the authority to “[p]revent construction, modification, or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard.” Since Wyoming’s SIP sets forth legally enforceable procedures to implement the authority to “[p]revent construction, modification, or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard,” we agree with the State’s findings that Chapter 6, section 2 continues to satisfy the requirements of 40 CFR 51.11(a)(4) and 51.18(a).

¹² 40 FR 24726 (June 10, 1975).

Wyoming also states that Chapter 6, section 2(b)(i) of the Wyoming Air Quality Rules and Regulations is analogous to 40 CFR 51.18(b) which requires plans to contain provisions that require applicants to submit information on the nature and amounts of emissions, locations, design, construction and operation of such sources as may be necessary to permit the state agency to make the determination referred to in 40 CFR 51.18(a). We agree with the State's findings that Chapter 6, Section 2 continues to satisfy the requirements of 40 CFR 51.18(b).

Wyoming also provides in their August 21, 2020 letter that Chapter 6, section 2(c)(ii) of the Wyoming Air Quality Rules and Regulations meets the requirements of 40 CFR 51.18(c) requiring state permitting agencies to have the authority to deny approval of construction of new sources or modification of existing sources that would result in interference with the attainment of maintenance of national standards. Chapter 6, section 2(c)(ii) of the Wyoming Air Quality Rules and Regulations states that approval will not be granted unless the applicant demonstrates the construction or modification will not prevent attainment or maintenance of national standards. We agree with the State's findings that Chapter 6, section 2 continues to satisfy the requirements of 40 CFR 51.18(c).

Lastly, Wyoming states that Chapter 6, section 2(l) of the Wyoming Air Quality Standards and Regulations meets the requirements of 40 CFR 51.18(d) which states that an approval or any construction or modification must not affect the responsibility of the applicant to comply with applicable portions of the control strategy. Wyoming's Chapter 6, section 2(l) of the Wyoming Air Quality Standards and Regulations, states that "[a]pproval to construct or modify shall not relieve any owner or operator of the responsibility to comply with all local, state, and federal rules and regulations." We agree with the State's findings that Chapter 6, section 2 continues to satisfy the requirements of 40 CFR 51.18(d).

Pursuant to the criteria under section 110(a)(2)(E)(i) of the Clean Air Act, we have determined that WDEQ has the authority, personnel and funding to implement the NSR program for direct sources within Wyoming for existing EPA-issued permits under 40 CFR 52.2625(b)(1972). This is based upon the EPA's June 10, 1975 approval of Wyoming Air Quality Standards and Regulations, (1974) whereby

the EPA approved Wyoming's NSR program for direct sources and deleted EPA's federal NSR program under §52.2625(b) (1972).¹³ In our 1975 rulemaking, we determined that Wyoming's regulations met the requirement that Wyoming's SIP include procedures to assure that the construction or modification of new or existing stationary sources would not interfere with the attainment or maintenance of the NAAQS as required under 40 CFR 51.18. In addition, we have determined that Wyoming has demonstrated that its SIP and Chapter 6, section 2 of the Wyoming Air Quality Rules and Regulations provide WDEQ the authority to administer all permits, including the two permits issued by the EPA under 40 CFR 52.2625(b)(1972) on July 26, 1973.

IV. Final Action

Based on our finding that WDEQ has met the criteria under section 110(a)(2)(E)(i) of the CAA and that WDEQ has the authority, personnel and funding to implement the NSR program within Wyoming for existing EPA-issued permits under 40 CFR 52.2625(b)(1972), the two EPA-issued permits, both numbered 8A-EE, will be transferred to Wyoming upon the effective date of this rule.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a state NSR program submittal 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 NSR program submittals, the EPA's role is to approve state choices, provided they meet the criteria of the CAA and the criteria, standards and procedures defined in 40 CFR parts 51 and 52. 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 it is not a significant regulatory action under Executive Order 12866;

¹³ 40 FR 24726.

- 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 action is not approved to apply on any Indian reservation land or in any other area where the 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).

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 Clean Air 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 after date of publication 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

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Nitrogen oxides, Opacity, Ozone, Reporting and recordkeeping requirements, Sulfur dioxide, Sulfur oxides, Transportation, Volatile organic compounds.

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 20, 2021.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

[FR Doc. 2021-11193 Filed: 5/27/2021 8:45 am; Publication Date: 5/28/2021]