



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2023-0641; FRL-12157-02-R8]

Air Plan Approval; North Dakota; Approval of Air Quality Implementation Plans; Regional Haze State Implementation Plan; Regional Haze Five Year Progress Report and Nitrogen Oxides Best Available Retrofit Technology Determination for Coal Creek Station for the First Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving certain portions of State Implementation Plan (SIP) revisions submitted by the State of North Dakota (North Dakota) on January 12, 2015, and August 11, 2022, to address regional haze. Specifically, the EPA is approving North Dakota's nitrogen oxides (NO_x) Best Available Retrofit Technology (BART) determination for Coal Creek Station power plant (Coal Creek) for the first implementation period of the regional haze program and North Dakota's five-year regional haze progress report. This action addresses the United States Court of Appeals for the Eighth Circuit's September 23, 2013, vacatur and remand of the portion of EPA's 2012 Regional Haze Federal Implementation Plan (FIP) that promulgated a BART emission limit of 0.13 pounds per million BTU (lb/MMBtu) NO_x (30-day rolling average) for Coal Creek. The EPA is taking this action pursuant to the Clean Air Act (CAA).

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

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2023-0641. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g.,

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 through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Joe Stein, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, telephone number: (303) 312-7078, email address: stein.joseph@epa.gov.

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

I. What is being addressed in this document?

The EPA is approving North Dakota’s 2015 progress report and the portion of North Dakota’s 2022 SIP submission relating to the first implementation period¹ NO_x BART determination for Coal Creek. As required by section 169A of the CAA, the Regional Haze Rule (RHR) calls for state and federal agencies to work together to improve visibility in 156 national parks and wilderness areas, known as mandatory Class I Federal areas.² The rule requires states, in coordination with the EPA, the National Park Service, the Fish and Wildlife Service, the Forest Service, and other interested parties, to develop and implement air quality protection plans to reduce the pollution that causes visibility impairment in mandatory Class I Federal areas. Visibility impairing pollutants include fine and coarse particulate matter (PM) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (e.g., sulfur dioxide (SO₂), NO_x, and, in some cases, volatile organic compounds (VOC) and ammonia (NH₃)). As discussed in further detail in our proposed rule, in this document, and in the accompanying Response to Comments (RTC) document, the EPA finds that North Dakota’s 2015 progress

¹ EPA uses the terms “implementation period” and “planning period” interchangeably.

² See 40 CFR part 81, subpart D.

report and the portion of North Dakota's 2022 SIP submission relating to the first implementation period NO_x BART determination for Coal Creek meets all the statutory and regulatory requirements for the regional haze first planning period. The State's submission, the proposed rule, and the RTC document can be found in the docket for this action.

II. Summary of the Proposed Action, Public Comments, and EPA's Reasons for Final Action

On January 12, 2015, North Dakota submitted a SIP revision to address the regional haze program requirements to submit periodic progress reports under 40 CFR 51.308(g) and 40 CFR 51.308(h) (2015 progress report). On August 11, 2022, North Dakota submitted a SIP revision to address regional haze for the second implementation period and included a revised first implementation period NO_x BART determination for Coal Creek, pursuant to CAA section 169A, CAA section 169B, 40 CFR 51.308(e), and 40 CFR part 51, appendix Y (North Dakota's 2022 SIP submission).

On August 14, 2024, the EPA proposed to approve North Dakota's 2015 progress report and the portion of North Dakota's 2022 SIP submission relating to the first implementation period NO_x BART determination for Coal Creek.³ Our public comment period closed on September 13, 2024. The August 14, 2024, proposed rule provided background on the requirements of the CAA and RHR, a summary of North Dakota's regional haze SIP submittals and related EPA actions, and EPA's rationale for its proposed action. That background and rationale will not be restated in full here, although we briefly summarize the reasons for our approval of North Dakota's 2015 progress report and the portion of North Dakota's 2022 SIP submission relating to the first implementation period NO_x BART determination for Coal Creek in the paragraphs that follow.

The EPA proposed approval for the portion of North Dakota's 2022 SIP submission relating to the updated NO_x BART determination for Coal Creek Units 1 and 2, finding that

³ 89 FR 66015 (August 14, 2024).

LNC3⁴ at 0.15 lb/MMBtu (30-day rolling average) constitutes BART for these units. As an initial matter, we found that the State reasonably characterized the five factors required in a BART analysis, including the costs of compliance, energy and non-air quality environmental impacts of compliance, pollution control equipment at the source, the remaining useful life of any potentially affected sources, and visibility improvement resulting from controls. The EPA also found that North Dakota's revised cost calculation was appropriate, including: (1) the use of LNC3⁵ with DryFinishingTM as a baseline control technology in cost analysis; (2) the use of baseline NO_x emission rates of 0.18 lb/MMBtu for both units based on three-year annual average data of LNC3 operation on Unit 1; (3) and the use of amortization periods of 20 and 30 years for selective non-catalytic reduction (SNCR) and selective catalytic reduction (SCR), respectively. We proposed findings that the State reasonably considered that information, as well as each of the five BART factors,⁶ in reaching its revised NO_x BART determination. After consideration of all five of these factors and in accordance with the CAA BART requirements in the BART Guidelines contained within the RHR,⁷ we proposed to approve the State's determination that LNC3+ at a rate of 0.15 lb/MMBtu (30-day rolling average) constitutes NO_x BART for Coal Creek Units 1 and 2. We also proposed to approve North Dakota's 2015 progress report for meeting the requirements of 40 CFR 51.308(g) and 40 CFR 51.308(h).

During the public notice and comment period, we received seven comments on our proposal. Some comments received were in support of EPA's approval, while others argued in support of disapproval. Some commenters claim that the EPA erred in finding North Dakota's BART determination reasonable. Below, we provide a summary and response to this issue,

⁴ LNC3+ is a combination of modified and additional separated overfire air (SOFA), close-coupled overfire air (COFA), and low-NO_x burners (LNB).

⁵ LNC3 is a combination of closed-coupled overfire air (COFA), separated overfire air (SOFA), and low-NO_x burners (LNB).

⁶ Coal Creek is subject to 40 CFR part 51, appendix Y: Guidelines for BART Determinations Under the Regional Haze Rule because it is a power plant with a greater than 750 MW capacity.

⁷ 40 CFR part 51, appendix Y: Guidelines for BART Determinations Under the Regional Haze Rule.

including commenters' claims that more stringent controls of LNC3+ w/SNCR and LNC3+ w/SCR should not have been rejected.

In North Dakota's 2022 SIP submission, North Dakota determined that based on cost of compliance and visibility improvement associated with potential controls, it would not be reasonable to require SNCR or SCR when determining a BART emission limit for Coal Creek Units 1 and 2. Instead, North Dakota determined BART for Units 1 and 2 to be 0.15 lb/MMBtu associated with the operation of LNC3+. Some commenters argue that this limit for LNC3+ is less stringent than can be achieved at the facility and is not approvable as the emission limit required under BART. As further explained in section VII. of the RTC document, the EPA finds that given variable unit load and the variable sodium content of the fuel used by Coal Creek (North Dakota lignite), North Dakota's selection of a 0.15 lb/MMBtu limit for NO_x at Coal Creek Units 1 and 2 is reasonable. Some commenters argue that North Dakota's selection of LNC3+ for Coal Creek as BART is unreasonable; North Dakota should have required a more stringent control technology, LNC3+ w/SNCR, due to its cost effectiveness and visibility benefits; and the BART example cited by the EPA to support North Dakota's selection of LNC3+ is inappropriate. As further explained in section V. of the RTC document, the EPA disagrees with the commenters' claim that North Dakota's determination conflicts with past examples of BART determinations. Within the RTC, the EPA notes key fact-pattern differences in the past determinations cited. The EPA also notes that "each BART determination must be made on a case-by case basis considering the relevant facts in each case."⁸ Ultimately, based on the information in this document, the associated RTC document available in the docket to this action, as well as our proposed approval, we find that it is reasonable for North Dakota to reject a more stringent emissions limit associated with operation of LNC3+ w/SNCR based on cost of compliance and visibility improvement.

⁸ 82 FR 15139, 15144 (March 27, 2017).

Commenters also argue that North Dakota should have required a more stringent emission limit associated with operation of LNC3+ w/SCR because North Dakota improperly calculated cost of compliance and improperly weighed technical feasibility concerns. As further explained in the RTC document included in the docket to this action, The EPA supports North Dakota's determination that LNC3+ w/SCR is not reasonable due to a high cost of compliance. Further, the EPA finds that North Dakota provided documentation supporting their concerns about the technical feasibility of SCR at North Dakota lignite coal facilities. Additionally, we point to court precedent in support of North Dakota's arguments on technical feasibility of SCR at North Dakota lignite facilities.⁹ The EPA finds that it is reasonable for North Dakota to reject LNC3+ w/SCR based on concerns about both cost of compliance and technical feasibility. Thus, the EPA is finalizing approval of North Dakota's NO_x BART determination for Coal Creek Station Units 1 and 2 at a limit of 0.15 lb/MMBtu NO_x associated with operation of LNC3+. The comments received are summarized and addressed in full in a separate RTC document. The full text of comments received is included in the publicly posted docket associated with this action at [https:// www.regulations.gov](https://www.regulations.gov).

III. Final Action

For the reasons stated in the proposed rule, in the RTC document, and in this document, we are approving North Dakota's 2015 progress report and the portion of North Dakota's 2022 SIP submission relating to the first implementation period NO_x BART determination for Coal Creek Units 1 and 2. This approval establishes a BART limit of 0.15 lb/MMBtu NO_x (30-day rolling average) for Coal Creek Units 1 and 2.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the

⁹ "Order Denying Plaintiff's Motion to Stay and Motion for Dispute Resolution." *United States v. Minnkota Power Cooperative, Inc.* (831 F.Supp.2d 1109, D.N.D. 2011).

incorporation by reference of the SIP amendments described in the amendments to 40 CFR part 52. These amendments are contained within the Permit to Construct for Coal Creek Station: “PTC21001.” In § 52.1820, the table in paragraph (d) is amended under the center heading “Coal Creek Station Units 1 and 2.” by removing entry “PTC1005” and adding the entry “PTC21001” in its place (state effective date: 7/27/2022). The EPA is incorporating the NO_x BART emissions limits for Coal Creek Units 1 and 2 (0.15 lb/MMBtu NO_x) and corresponding monitoring, recordkeeping, and reporting requirements contained within “PTC21001.” The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 8 Office (please contact the person identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.¹⁰

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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

¹⁰ 62 FR 27968 (May 22, 1997).

- 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 subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because it is exempt from review 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, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it disapproves a state program;
- 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.

In addition, the SIP 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).

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, 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 in 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: March 5, 2026.

Cyrus M. Western,
Regional Administrator,
Region 8.

For the reasons stated in the preamble, the Environmental Protection Agency is amending 40

CFR part 52 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.*

Subpart JJ—North Dakota

2. In § 52.1820, the table in paragraph (d) is amended under the center heading “Coal Creek Station Units 1 and 2.” by removing the entry “PTC10005” and adding the entry “PTC21001” in its place to read as follows:

§ 52.1820 Identification of plan.

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(d) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation/date	Comments
*	*	*	*	*	*
Coal Creek Station Units 1 and 2.					
PTC21001	Air Pollution Control Permit to Construct for Best Available Retrofit Technology (BART)	7/27/2022	[insert date 30 days after date of publication in the Federal Register]	91 FR [insert Federal Register page where the document begins], [insert date of publication in the Federal Register]	Only: NO _x BART emissions limits for Units 1 and 2 and corresponding monitoring, recordkeeping, and reporting requirements.
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