

107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 5 a.m. to 9 p.m. from August 3 to August 20, 2005, a temporary § 165.T13–013 is added to read as follows:

**§ 165.T13–013 Safety Zone: New Tacoma Narrows Bridge Construction Project.**

(a) *Location.* The following is a safety zone: All waters of the Tacoma Narrows, Washington State, within 250 yards on either side of a line with the points of 47°16'15" N, 122°33'15" W, to 47°15'59" N, 122°32'49" W, to 47°15'49" N, 122°32'43" W. [Datum: NAD 1983]

(b) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in the zone except for those persons involved in the construction of the new Tacoma Narrows Bridge, supporting personnel, or other vessels authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representative.

(c) *Applicable dates.* This section applies from 5 a.m. until 9 p.m., Pacific daylight time, from August 3 to August 20, 2005.

Dated: July 29, 2005.

**Mark J. Huebschman,**

*Commander, U.S. Coast Guard, Acting Captain of the Port, Puget Sound.*

[FR Doc. 05–15617 Filed 8–5–05; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[RME Docket Number R08–OAR–2005–ND–0001; FRL–7942–4]

#### Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action approving certain revisions to the State Implementation Plan (SIP) as submitted by the Governor of North Dakota with a letter dated April 11, 2003. The revisions affect certain portions of air pollution control rules regarding permitting and prevention of significant deterioration. This action is

being taken under section 110 of the Clean Air Act.

**DATES:** This rule is effective on October 7, 2005, without further notice, unless EPA receives adverse comment by September 7, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. R08–OAR–2005–ND–0001, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Agency Web site: <http://docket.epa.gov/rmepub/index.jsp>. Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: [long.richard@epa.gov](mailto:long.richard@epa.gov) and [platt.amy@epa.gov](mailto:platt.amy@epa.gov).

- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. R08–OAR–2005–ND–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available at <http://docket.epa.gov/rmepub/index.jsp>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA's Regional Materials in EDOCKET and Federal [regulations.gov](http://www.regulations.gov) Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you

provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through EDOCKET or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the Regional Materials in EDOCKET index at <http://docket.epa.gov/rmepub/index.jsp>. Although listed in the index, some information is not publicly available, *i.e.*, 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 either electronically in Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Amy Platt, Environmental Protection Agency, Region 8, (303) 312–6449, [platt.amy@epa.gov](mailto:platt.amy@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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### Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *ND* mean the State of North Dakota, unless the context indicates otherwise.

(v) The initials *PSD* mean prevention of significant deterioration of air quality.

(vi) The initials *NDDH* mean or refer to the North Dakota Department of Health.

### I. General Information

#### A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through Regional Materials in EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

I. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

II. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

III. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

IV. Describe any assumptions and provide any technical information and/or data that you used.

V. If you estimate potential costs or burdens, explain how you arrived at

your estimate in sufficient detail to allow for it to be reproduced.

VI. Provide specific examples to illustrate your concerns, and suggest alternatives.

VII. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

VIII. Make sure to submit your comments by the comment period deadline identified.

### II. Background

The Act requires States to follow certain procedures in developing implementation plans and plan revisions for submission to us. Sections 110(a)(2) and 110(l) of the Act provide that each implementation plan must be adopted after reasonable notice and public hearing.

To provide for public comment, the North Dakota Department of Health (NDDH), after providing notice, held a public hearing on April 19, 2002 to address the revisions to the State Implementation Plan (SIP) and Air Pollution Control Rules. Following the public hearing, comment period, and legal review by the North Dakota Attorney General's Office, the North Dakota State Health Council adopted the revisions, which became effective on March 1, 2003. The North Dakota Governor submitted the SIP revisions to us with a letter dated April 11, 2003.

On October 21, 2004, EPA published a notice of final rulemaking for the State of North Dakota (*see* 69 FR 61762). In that final rulemaking, we approved portions of the SIP revision submitted by the Governor of North Dakota on April 11, 2003. The portions of the SIP revision that we approved affected the North Dakota Air Pollution Control Rules regarding general provisions and emissions of particulate matter and sulfur compounds.

As we discussed in our October 21, 2004 notice of final rulemaking, we were handling separately the revisions in the April 11, 2003 submittal addressing North Dakota Air Pollution Control Rules Section 33–15–01–13, regarding shutdown and malfunction of an installation, certain portions of Chapter 33–15–14, regarding construction and minor source permitting, and certain portions of Chapter 33–15–15, regarding prevention of significant deterioration.

### III. Revisions in the April 11, 2003 Submittal That Are the Subject of This Document

The revisions in the April 11, 2003 submittal to be addressed in this document pertain to certain portions of the North Dakota Air Pollution Control

Rules regarding construction and minor source permitting and prevention of significant deterioration, which involve sections of the following chapters of the North Dakota Administrative Code (N.D.A.C.): 33–15–14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (certain sections specific to construction and minor source permitting) and 33–15–15 (Prevention of Significant Deterioration of Air Quality).

#### A. Chapter 33–15–14, N.D.A.C., Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (certain sections specific to construction and minor source permitting)

In the Permit to Construct section, 33–15–14–02, subsection 33–15–14–02.5, Review of application—Standard for granting permits to construct, was revised to increase the amount of time the NDDH is allowed to make its preliminary determinations on a Permit to Construct application. The increase was from 30 days to 90 days. In addition, a revision was made to the provision regarding the preliminary determination on whether the proposed project will provide all known available and reasonable methods of emission control. “All known” was changed to “necessary.” The NDDH was concerned that “all known” could have been interpreted to require the absolute best control technology available (*i.e.*, Lowest Achievable Emission Rate or LAER) even though emission limits in the other rules of the SIP may require something less. Since it was never NDDH's intent to establish additional emission control requirements (especially LAER) in the Permit to Construct section that would supersede those in the rest of the SIP, this revision was made to clarify that the emission control methodology proposed must be sufficient to comply with the applicable rules but not more than the applicable requirements dictate.

Subdivision 33–15–14–02.13.i, paragraph 5, was revised to clarify that petroleum liquid storage tanks that are subject to air pollution control requirements under the State's New Source Performance Standards (NSPS) Program, Chapter 33–15–12, are not exempt from getting a permit to construct.

In the Minor Source Permit to Operate section, 33–15–14–03, subsection 33–15–14–03.4, Performance testing, was revised to incorporate performance and emissions testing requirements previously located at 33–15–14–03.11.

As a result, subsection 33-15-14-03.11 was deleted.

In subsection 33-15-14-03.5, Action on applications, subparagraph 33-15-14-03.5.a(1)(d), was revised to eliminate the requirement for delivery of a copy of the proposed minor source permit to operate and public notice to the chief executive officer of the city and county where the source is located and the Regional Planning Agency. Regional Planning Agencies will continue to get notice of preconstruction permits and counties will continue to get notice of federally enforceable minor source permits to operate since the State sends a copy to the County Auditor. Therefore, this revision results in a change in process but without any substantive impacts.

The changes to subsection 33-15-14-03.5 also clarified that lands will be considered to be "significantly affected" by a source's emissions if the source is located within 50 kilometers of such land. While a source seeking a federally enforceable minor source permit to operate may cause localized air quality degradation near the source, these impacts diminish rapidly with increasing distance from the source. Therefore, EPA believes this clarification is reasonable since it is extremely unlikely that minor sources would have a significant impact beyond 50 km.

The revisions discussed above are clarifying or procedural in nature; therefore, these revisions are approvable.

Finally, in the Permit to Construct section, 33-15-14-02, Subsection 33-15-14-02.13, Exemptions, subdivision 33-15-14-02.13.c was revised to amend an exemption for internal combustion engines. The change exempts internal combustion engines with a maximum rating of less than 1000 brake horsepower which operate less than 500 hours in a year from the construction permitting requirements provided they are not "utility units" as defined in the State's Acid Rain Program, Chapter 33-15-21. This revision was made primarily for emergency generators. The State believes that almost all the engines that fall into this exemption category are diesel engines or natural gas fired. Therefore, using the appropriate AP-42 emission factors, they estimated that the most one of these engines will emit (*i.e.*, operating at 1000 horsepower for 500 hours/year) is 8 tons/year of any pollutant. Even though these units are exempt from the preconstruction permitting requirements, they must still comply with any other applicable requirements in the permitting rules. Also, if any such unit is located at a

major source, it will be included in the Title V permit.

The engines covered by this exemption will produce only a minimal increase in emissions. Since the ambient levels are well below the NAAQS, EPA concludes that this revision will not interfere with attainment or maintenance of the NAAQS or any other applicable requirement of the Act and is, therefore, approvable.

#### *B. Chapter 33-15-15, N.D.A.C., Prevention of Significant Deterioration (PSD) of Air Quality*

In subsection 33-15-15-01.1, Definitions, the subparagraph regarding major modifications (33-15-15-01.1.x(2)(d)) was revised. The revision clarifies that a physical change or change in the method of operation does not include an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit conditions established under the requirements of the PSD program (Chapter 33-15-15) or the Permit to Construct and Permit to Operate requirements of Chapter 33-15-14. This revision became effective at the State level on March 1, 2003, to make the regulations consistent with the Federal PSD requirements in effect at that time, as found in 40 CFR 51.24(b)(2)(iii)(f) and 52.21(b)(2)(iii)(f). This revision is still consistent with the new PSD requirements found in 40 CFR 51.166 and 52.21, as promulgated on December 31, 2002. Therefore, this revision is approvable.

In addition, subsection 33-15-15-01.4, Review of New Major Stationary Sources and Major Modifications, subparagraph 33-15-15-01.4.h(3), regarding source information, was updated to delete a reference to an outdated, obsolete State document regarding Best Available Control Technology (BACT). This revision is editorial in nature and is approvable.

#### **IV. Section 110(l)**

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirements of the Act. There are no nonattainment areas in North Dakota. The revisions to the permitting provisions and PSD rules, except as discussed below, were either clarifying or procedural in nature, will not affect emissions, and will not interfere with requirements of the Act

related to administrative or procedural provisions. Therefore, these revisions do not interfere with attainment or maintenance of the NAAQS or other applicable requirements of the Act.

The State believes that the exemption for internal combustion engines in 33-15-14-02.13 applies mostly to emergency type generators that are diesel or natural gas fired. Using appropriate AP-42 emission factors, they demonstrated that the most one of these engines will emit (*i.e.*, operating at 1000 horsepower for 500 hours/year) is 8 tons/year of any pollutant. Therefore, the engines covered by this exemption will produce only a minimal increase in emissions. Since ambient levels are well below the NAAQS, EPA concludes that this revision will not interfere with attainment or maintenance of the NAAQS or any other applicable requirement of the Act.

Finally, the revision to the subparagraph 33-15-15-01.1.x(2)(d) of the PSD chapter was required by EPA to be consistent with Federal PSD requirements previously found in 40 CFR 51.24(b)(2)(iii)(f) and 40 CFR 52.21(b)(2)(iii)(f) and now located in 40 CFR 51.166 and 40 CFR 52.21. Therefore, the revision does not interfere with the attainment or maintenance of the NAAQS, or other applicable requirements of the Act, but provides some enhancement.

#### **V. Final Action**

We reviewed the adequacy of these certain revisions submitted by the North Dakota Governor with a letter dated April 11, 2003, and find them approvable.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective October 7, 2005, without further notice unless the Agency receives adverse comments by September 7, 2005. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. 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. Please note that if EPA receives adverse comment on an amendment, paragraph,

or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule 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 October 7, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 14, 2005.

**Max H. Dodson,**

*Acting Regional Administrator, Region 8.*

■ 40 CFR part 52 is amended to read as follows:

#### PART 52—[AMENDED]

■ 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. Section 52.1820 is amended by adding paragraph (c)(34) to read as follows:

#### § 52.1820 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(34) Certain revisions to the North Dakota State Implementation Plan and Air Pollution Control Rules as submitted by the Governor with a letter dated April 11, 2003. The revisions affect portions of North Dakota Administrative Code (N.D.A.C.) regarding construction and minor source permitting and prevention of significant deterioration of air quality.

(i) Incorporation by reference.

(A) Revisions to the North Dakota Air Pollution Control Rules as follows:

(1) Chapter 33-15-14, N.D.A.C., Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate, subsections 33-15-14-02.5, 33-15-14-02.13.c, 33-15-14-02.13.i(5), 33-15-14-03.4, 33-15-14-03.5.a(1)(d), and 33-15-14-03.11, effective March 1, 2003.

(2) Chapter 33-15-15, N.D.A.C., Prevention of Significant Deterioration of Air Quality, subsections 33-15-15-01.1.x(2)(d) and 33-15-15-01.4.h(3), effective March 1, 2003.

[FR Doc. 05-15609 Filed 8-5-05; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[R06-OAR-2005-TX-0011; FRL-7948-7]

#### Approval and Promulgation of Air Quality Implementation Plans; Texas; Vehicle Inspection and Maintenance Program for Travis and Williamson Counties

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving a revision to the State Implementation