General Conformity Rule to include de minimus emission levels for Particulate Matter 2.5 ($PM_{2.5}$). This update ensures consistency with the Federal General Conformity Rule.

DATES: Comments on this proposed action must be received in writing by January 3, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–1055 by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail: shepard.barbara@epa.gov*.
3. *Mail:* Barbara Shepard, Environmental Protection Agency, Region 7, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier:* Deliver your comments to Barbara Shepard, Environmental Protection Agency, Region 7, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Barbara Shepard at (913) 551–7759, or by e-mail at *shepard.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: November 26, 2007.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. E7–23483 Filed 12–3–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–0717; FRL–8501–6]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Approval of Construction Permit Waiver

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Wisconsin State Implementation Plan (SIP) submitted by the Wisconsin Department of Natural Resources (WDNR) on May 1, 2007. The WDNR has submitted for approval into its SIP a revision which allows the State to issue a waiver to a source allowing it to commence construction prior to a construction permit being issued, in certain cases. This provision is only allowed for minor sources which meet specific criteria, and WDNR must follow established procedures to grant a waiver. In addition, the revision also contains changes to Wisconsin's fee provisions to allow a fee to be charged for the waiver. EPA is proposing to approve this revision because it is consistent with Federal regulations governing state permit programs.

DATES: Comments must be received on or before January 3, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0717, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: blakley.pamela@epa.gov*.
3. *Fax:* (312)886–5824.
4. *Mail:* Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2007–0717. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, 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 *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, 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 *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 instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://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 either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This

facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Susan Siepkowski, Environmental Engineer, at (312) 353–2654 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Susan Siepkowski, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–2654, *siepkowski.susan@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Should I Consider as I Prepare My Comments for EPA?
II. What Has Wisconsin Submitted?
III. Does This Submittal Comply With Federal Regulations?
IV. What Action Is EPA Taking Today?
V. Statutory and Executive Order Reviews.

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

When submitting comments, remember to:

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

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

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

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

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

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

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

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

II. What Has Wisconsin Submitted?

On May 1, 2007, WDNR submitted a SIP revision request to EPA for approval. The submittal requests that EPA approve the following revisions to WDNR's SIP: to renumber and amend NR 406.03, to amend NR 410.03(intro.) and to create NR 406.03(2) and NR 410.03(l)(bm). These changes would allow WDNR to issue a waiver to a source allowing it to commence construction prior to a construction permit being issued. These revisions also contain changes to Wisconsin's fee provisions to allow a fee to be charged for the waiver.

The WDNR held two public hearings in August 2006 and the comment period for this rule closed on August 18, 2006. The WDNR proposed this rule revision to the Wisconsin Natural Resources Board for adoption, and the Board approved the final rule on March 22, 2007.

Wisconsin Rule NR 406 contains the requirements and procedures for construction permits. The revisions to NR 406.03 require the following conditions to be satisfied before the State may grant a source a waiver: (1) A complete construction permit application has been submitted for the source; (2) the source and the proposed project will result in the source remaining a true minor source (no synthetic minor or netting permits); (3) the waiver requests must demonstrate that undue hardship will result if the waiver is not granted. Undue hardship may result from adverse weather conditions, catastrophic damage of existing equipment, a substantial financial hardship that may preclude the project in its entirety, and other unique conditions; (4) the source is not located or to be located within 10 kilometers of a Class I area.

The rule further states that a waiver does not obligate the WDNR to ultimately approve the project, or relieve the source from compliance with any applicable regulation. Finally, if a waiver is granted and the source proceeds with construction, the rule specifies that it is doing so at its own risk, and the source may not operate until the permit is issued. WDNR may rescind a waiver if the owner or operator does not diligently respond to inquiries on the construction permit application or if WDNR preliminarily determines that the source will not meet the criteria for permit approval.

Additional changes are being made to NR 410, Wisconsin's air permit fee rules, to include fees for waivers. NR 10.03(1)(a)(5), related to the fees for a construction permit revision, is amended to exempt the fee if the requested revision is to make the source eligible for a registration operation permit.

III. Does This Submittal Comply With Federal Regulations?

EPA reviewed Wisconsin's May 1, 2007, SIP revision submittal to determine completeness, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). We found the submittal to be complete.

EPA evaluated Wisconsin's waiver rule with respect to the SIP approval criteria established in EPA's June 28, 1989, rulemaking ''Requirements for the Preparation, Adoption, and Submittal of Implementation Plans,'' (EPA's 1989 rulemaking); Approval and Promulgation of Implementation Plans, 54 FR 27274. In addition, EPA has evaluated WDNR's rule with respect to relevant Federal rules and guidance documents, as discussed in more detail below.

Section 165 of the Clean Air Act (Act) sets forth preconstruction requirements for the Prevention of Significant Deterioration (PSD) program. Specifically, ''(a) No major emitting facility on which construction is commenced after the date of the enactment of this part, may be constructed in any area to which this part applies unless (1) a permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part.''

However, this requirement only applies to major sources, and no such restriction is specified under the minor New Source Review (NSR) program requirements, which are set forth in 40 CFR 51.160. In addition, EPA has made determinations which further support that construction may begin before a permit is issued for minor sources. For example, EPA's October 10, 1978, memorandum from Edward E. Reich to Thomas W. Devine in Region 1 discusses preconstruction activities allowed at a site with both PSD and non-PSD sources. This memo states that construction may begin on PSD-exempt projects before the permit is issued.

Furthermore, EPA approved a rule for Idaho's permit program which allowed construction to commence prior to a permit being issued. (See 68 FR 2217, final rule.) The August 13, 2002, **Federal Register** proposed approval of Idaho's rule, Section 213, regarding construction prior to final permit issuance, states:

> Section 213, entitled ''Pre-Permit Construction'' allows construction to commence on certain non-major sources and non-major modifications prior to receiving a final permit to construct, provided certain conditions are met. EPA believes that this provision is consistent with the requirements of section 110(a)(2)(C) of the CAA and 40 CFR 51.160, including 40 CFR 51.160(b), which requires States to have legally

enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the NAAQS. (See 67 FR 52666).

WDNR's rule revision provides that waivers can only be granted for minor sources, and the rule complies with EPA's minor source NSR rules set forth at 40 CFR 51.160. The minor source NSR rules require a state to have a program: (1) To determine ''whether construction or modification'' of a source will interfere with the SIP or attainment or maintenance of the National Ambient Air Quality Standards (NAAQS); and, (2) that includes procedures to ''prevent the construction or modification'' of the source if it would interfere with the SIP or attainment or maintenance of the NAAQS. WDNR will have enforceable procedures to prevent construction or modification of a source if it would violate any SIP requirement, or interfere with attainment or maintenance of the NAAQS. Additionally, WDNR can rescind a waiver if the source does not meet the criteria in Wis. Statute 285.63(1), which contain the criteria for permit application approval, including that the source will not cause or exacerbate a violation of any NAAQS or ambient air increment, and that the source will meet all applicable emission limitations and other requirements promulgated under the chapter.

Finally, the rule contains the following additional safeguards. First, granting a waiver does not obligate the WDNR to ultimately approve the proposed project, or relieve the source from compliance with any applicable regulation. Second, if a waiver is granted and the source proceeds with construction, the rule specifies that it is doing so at its own risk, and the source may not operate until the permit is issued.

Based on EPA's regulations and guidance, and the reasons set forth above, we believe that WDNR's SIP revision is approvable.

IV. What Action Is EPA Taking Today?

EPA is proposing to approve revisions to Wisconsin SIP rules NR 406 and 410 submitted by the State on May 1, 2007. EPA also is soliciting comment on this proposed approval.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed 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.*).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve 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 (Pub. L. 104–4).

Executive Order 13132: Federalism

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 proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed 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).

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This proposed 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 proposes approval of a state rule implementing a Federal standard.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant regulatory action,'' 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).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTAA do not apply.

List of Subjects in 40 CFR Part 52

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

Dated: November 23, 2007.

Gary Gulezian,

Acting Regional Administrator, Region 5.

[FR Doc. E7–23482 Filed 12–3–07; 8:45 am]

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