

non-regulatory provisions adopted into the State SIP April 1, 2009 satisfactorily address the requirements of elements (1) and (3) of section 110(a)(2)(D)(i) for the 1997 PM<sub>2.5</sub> and 8-hour ozone standards.

#### V. Proposed Action

EPA is proposing approval of revisions, submitted by the Governor of North Dakota with a letter dated April 6, 2009, to the prevention of significant deterioration provisions in subsection 33–15–15 of the NDAC, and partial approval of the addition to the State SIP of the “Interstate Transport of Air Pollution” SIP addressing the requirements of Clean Air Act section 110(a)(2)(D)(i) for the 1997 PM<sub>2.5</sub> and 8-hour ozone National Ambient Air Quality Standards (NAAQS). For the North Dakota Interstate Transport SIP, EPA is proposing approval of: (a) The introductory language in the State SIP Section 7.8; (b) the “Overview” language in subsection A., Section 7.8.1; (c) language in Section 7.8.1, subsection B., “Nonattainment and Maintenance Area Impact,” that specifically addresses element (1) of section 110(a)(2)(D)(i), the requirement that the SIP contain adequate provisions prohibiting emissions from North Dakota from contributing significantly to nonattainment in any other state; and (d) Section 7.8.1, subsection C, “Impact on Prevention of Significant Deterioration (PSD).”

#### VI. Statutory and Executive Order Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission 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 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Pub. L. 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

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

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

Dated: March 18, 2010.

**Carol L. Campbell,**

*Acting Assistant Regional Administrator,*  
Region 8.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R08–OAR–2007–1032; FRL–9131–4]

#### Approval and Promulgation of State Implementation Plans; State of Colorado; Interstate Transport of Pollution Revisions for the 1997 8-Hour Ozone NAAQS: “Significant Contribution to Nonattainment” Requirement

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing partial approval of the State Implementation Plan (SIP) revisions “State of Colorado Implementation Plan to Meet the Requirements of Clean Air Act Section 110(a)(2)(D)(i)(I)—Interstate Transport Regarding the 1997 8-Hour Ozone Standard” submitted by the State of Colorado on June 18, 2009. The Colorado Interstate Transport SIP revisions submitted June 18, 2009 address the requirements of Clean Air Act section 110(a)(2)(D)(i)(I) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS). In this **Federal Register** action EPA proposes approval of the Colorado SIP sections that address the requirement of section 110(a)(2)(D)(i)(I) prohibiting a state’s emissions from contributing significantly to any other state’s nonattainment of the NAAQS. EPA will act at a later date on the Colorado Interstate Transport SIP sections that address the requirement prohibiting a state’s emissions from interfering with any other state’s maintenance of the NAAQS. This action is being taken under section 110 of the Clean Air Act.

**DATES:** Comments must be received on or before April 30, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2007–1032, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *E-mail:* [videtich.callie@epa.gov](mailto:videtich.callie@epa.gov) and [mastrangelo.domenico@epa.gov](mailto:mastrangelo.domenico@epa.gov).
- *Fax:* (303) 312–6064 (please alert the individual listed under **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

• *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R08-OAR-2007-1032. 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. General Information 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 <http://www.regulations.gov> or in hard copy at the Air Program, Environmental

Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129. 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:** Domenico Mastrangelo, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-6436, [mastrangelo.domenico@epa.gov](mailto:mastrangelo.domenico@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **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 *Colorado* and *State* mean the State of Colorado.

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##### **I. General Information**

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

1. *Submitting CBI.* Do not submit CBI to EPA through <http://www.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:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- b. 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.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

##### **II. Background Information**

Section 110(a)(2)(D)(i) of the CAA requires that a state's SIP must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in any other state; (2) interfere with maintenance of the NAAQS by any other state; (3) interfere with any other state's required measures to prevent significant deterioration of air quality; or (4) interfere with any other state's required measures to protect visibility. On June 11, 2008, the State of Colorado submitted to EPA an Interstate Transport SIP addressing the interstate transport requirements of CAA section 110(a)(2)(D)(i) for the 1997 PM<sub>2.5</sub> and 8-hour ozone NAAQS. In response to EPA's concerns with the June 11, 2008 submittal, on December 30, 2008 the State adopted and on June 18, 2009 submitted a revised SIP addressing the requirements of elements (1) and (2) of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. The State of Colorado is planning to submit in June 2010 further revisions addressing the requirements of elements (3) and (4) for the 1997 8-hour ozone NAAQS and the requirements of elements (1) through (4) for the 1997 PM<sub>2.5</sub> NAAQS.

### III. What Action Is EPA Proposing?

EPA is proposing partial approval of the Colorado Interstate Transport of Air Pollution SIP addressing the requirements of CAA section 110(a)(2)(D)(i)(I) for the 1997 8-hour ozone NAAQS. On December 30, 2008, the Colorado Air Quality Control Commission (AQCC) adopted the “State of Colorado Implementation Plan to Meet the Requirements of the Clean Air Act Section 110(a)(2)(d)(i)(I)—Interstate Transport Regarding the 1997 8-Hour Ozone Standard.” Colorado submitted the December 30, 2008 SIP revision to EPA on June 18, 2009. In this **Federal Register** action EPA is proposing to approve only the language and demonstration that addresses element (1) of section 110(a)(2)(D)(i): Prohibition of significant contribution to nonattainment of the 1997 8-hour ozone NAAQS in any other state.

### IV. What Is the State Process To Submit These Materials to EPA?

Section 110(k) of the CAA addresses EPA’s rulemaking action on SIP submissions by states. The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a state to EPA.

The Colorado AQCC held a public hearing in December 2008 for the interstate transport SIP revision: “State of Colorado Implementation Plan to Meet the Requirements of Clean Air Act Section 110(a)(2)(D)(i)(I)—Interstate Transport Regarding the 1997 8-Hour Ozone Standard.” The AQCC adopted this revision on December 30, 2008, and the State submitted it to EPA on June 18, 2009.

On November 18, 2009, the AQCC provided EPA with an exact color duplicate of the SIP adopted by the AQCC on December 30, 2008 and included in the June 18, 2009 submittal to EPA. In the original submittal, AQCC provided a black and white copy. The SIP’s color duplicate, available for review as part of the Docket, makes it easier to understand modeling results reported in several graphs that are part of the SIP technical demonstration.

EPA has reviewed the submittal from the State of Colorado and has determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

### V. EPA’s Review and Technical Information

The interstate transport provisions at CAA section 110(a)(2)(D)(i), also referred to as the “good neighbor” provisions, require that each state’s SIP contain adequate provisions prohibiting emissions that adversely affect any other state’s air quality through interstate transport of air pollutants. As discussed in the Background Information section of this notice, a state’s SIP must contain provisions that satisfy the four elements of section 110(a)(2)(D)(i). On August 15, 2006, EPA issued guidance for SIP submissions addressing the requirements of section 110(a)(2)(D)(i) for the 1997 PM<sub>2.5</sub> and 8-hour ozone NAAQS.<sup>1</sup> The portions of the Colorado Interstate Transport SIP revision that address element (1) of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS are consistent with EPA’s 2006 guidance.

To demonstrate that emissions from Colorado do not contribute significantly to nonattainment of the 1997 8-hour ozone NAAQS in any other state, the Colorado Interstate Transport SIP relies on a combination of: (a) Modeling analysis done by the State as part of the attainment demonstration SIP for the Denver Metropolitan Area/North Front Range (DMA/NFR) nonattainment area for the 1997 8-hour ozone standard; (b) monitoring data gathered by states and reported to EPA in the Air Quality System (AQS) database; and (c) considerations of geographical and meteorological factors. In this action, EPA expands on the analysis of geographical and meteorological factors, and of ozone concentration levels reflecting AQS monitoring data.

Section 110(a)(2)(D)(i) provides that EPA cannot approve a state’s SIP for a new or revised NAAQS unless it contains adequate measures to prohibit emissions from sources within the state from contributing significantly to nonattainment of the NAAQS in another state. EPA’s August 15, 2006 guidance to states concerning section 110(a)(2)(D)(i) recommended various methods by which states might evaluate whether or not its emissions significantly contribute to violations of the 1997 ozone standards in another

state. Among other methods, EPA recommended consideration of available EPA modeling conducted in conjunction with CAIR,<sup>2</sup> or in the absence of such EPA modeling, consideration of other information such as the amount of emissions, the geographic location of violating areas, meteorological data, or various other forms of information that would be relevant to assessing the likelihood of significant contribution to violations of the NAAQS in another state. The assessment of significant contribution to nonattainment is not restricted to impacts upon areas that are formally designated nonattainment. Consistent with EPA’s approach in CAIR, this impact must be evaluated with respect to any monitors showing a violation of the NAAQS (70 FR 25172, May 12, 2005, and 63 FR 57371, October 27, 1998). Furthermore, although relevant information other than modeling may be considered in assessing the likelihood of significant contribution to violations of the 1997 8-hour ozone standard in another state, EPA notes that no single piece of information in the following discussion is by itself dispositive of the issue. Instead, the total weight of all the evidence taken together supports the conclusion that emissions from Colorado sources are unlikely to contribute significantly to violations of the 1997 8-hour ozone standard in any other state.

The Colorado Interstate Transport SIP uses results from Colorado’s 2009 “8-Hour Ozone Attainment Plan” for the DMA/NFR nonattainment area, and a report from the Western States Air Resource (WESTAR) Council to underscore that: (a) Local anthropogenic ozone contribution to high ozone concentrations in Denver is only about 25%; and (b) on days of highest ozone concentrations (reflecting a design value of 84.9 ppb) in the DMA/NFR area, the projected design values decrease to 63 ppb or less for all downwind Colorado counties east of an imaginary north-south line approximately 70 miles east from Denver.<sup>3</sup> EPA does not accept the State of Colorado Interstate Transport SIP assessment that these results

<sup>2</sup> In this action the expression “CAIR” refers to the final rule published in the May 12, 2005 **Federal Register** and entitled “Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to NO<sub>x</sub> SIP Call; Final Rule” (70 FR 25162).

<sup>3</sup> See Figure 5, page 15 of the Interstate Transport SIP submitted June 18, 2009. It must be noted that the modeling analysis domain for the DMA/NFR attainment plan was limited to the State territory, and that the 70-mile distance represents the approximate distance from Denver to the western border of Morgan County.

<sup>1</sup> Memorandum from William T. Harnett entitled Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards (Aug. 15, 2006) (“2006 Guidance”). Available for review in EPA’s January 14, 2010 docket document entitled: “Relevant Guidance and Supporting Documentation for the Proposed Rulemaking **Federal Register** Action Docket ID # EPA-R08-OAR-2007-1032.

demonstrate that “the magnitude of ozone transport from Colorado to other states is too low to significantly contribute to nonattainment in \* \* \* any other state with respect to the 0.08 ppb NAAQS.”<sup>4</sup> Similarly, EPA does not accept the claim in Colorado’s SIP that the absence of violations of the 8-hour ozone NAAQS in adjacent downwind states such as Kansas, Nebraska and Wyoming suffices to show that emissions from Colorado sources do not significantly affect farther downwind ozone nonattainment areas such as St. Louis.<sup>5</sup> The relatively limited contribution of local emissions to nonattainment in the DMA/NFR, the quick drop in ozone levels in the easternmost Colorado counties, and even the substantial gap between the 1997 NAAQS and design values in adjacent downwind states do not exclude a potential significant contribution from Colorado emissions to downwind nonattainment areas. However, as a reflection of emission levels, the relatively (to the 1997 8-hour ozone NAAQS) moderate ozone concentrations in eastern Colorado and in adjacent downwind states somewhat reduces the probability of significant ozone contribution from Colorado emission sources to considerably farther downwind nonattainment areas such as St. Louis, Missouri, and Chicago, Illinois.

In addition, significant contribution should be measured not just against nonattainment areas, but also against areas with monitors showing violations of the NAAQS. That said, nonattainment areas are a convenient starting point for EPA’s analysis. For the 1997 8-hour ozone NAAQS, the St. Louis area and the Illinois and Wisconsin Counties along the southwestern shore of Lake Michigan (Illinois/Wisconsin area) are the designated downwind nonattainment areas closest to Colorado.<sup>6</sup> EPA’s evaluation of whether emissions from Colorado contribute significantly to ozone nonattainment in these areas relies on an examination of a variety of data and analysis that provide insight on ozone transport from Colorado to these two areas. Because EPA does not

have detailed modeling for Colorado and nearby downwind states, our approach does not rely on a quantitative determination of Colorado’s contribution, as EPA did for other states in its CAIR rulemaking, but on a weight-of-evidence analysis based on qualitative assessments and estimates of the relevant factors. While conclusions reached for each of the factors considered in the following analysis are not in and by themselves determinative, consideration of all of these factors provides a reliable qualitative conclusion on whether Colorado’s emissions are likely to contribute significantly to nonattainment in the St. Louis and the Illinois/Wisconsin areas.

The Illinois/Wisconsin nonattainment area is approximately 900 miles east/northeast from the Colorado DMA/NFR area. Distance per se is not an obstacle to long range transport of ozone and/or its precursors, as discussed in the January 30, 2004 notice proposing CAIR (69 FR 4599). NO<sub>x</sub>, the primary ozone precursor that was the object of the CAIR transport study, may be transported for long distances, contributing significantly to high ozone concentrations in other states. However, with increasing distance there are greater opportunities for ozone or NO<sub>x</sub> dispersion and/or removal from the atmosphere due to the effect of winds or chemical sink processes. As a result, one may conclude that the 900-mile distance from Colorado sources of NO<sub>x</sub> emissions and the Illinois/Wisconsin area reduces, but does not exclude, the possibility of significant contribution to this area’s nonattainment.

Another transport factor is wind direction. For long range transport winds, a modeling analysis of ozone dispersion during the summer months (June to August) of the five-year period 1991–1995 shows that on high local ozone days the prevailing long range transport winds in States immediately to the east and north of Colorado (Kansas, Nebraska, South Dakota, Iowa, Minnesota, and North Dakota) had a southerly direction. On high regional ozone days, during the same period, regional transport winds in the same States were southwesterly, but with a westerly component so weak that a greater portion of NO<sub>x</sub> emissions from Colorado would likely remain significantly west of the Illinois/Wisconsin nonattainment area.<sup>7</sup> To the extent that these results are

representative of general ozone transport patterns not limited to the 1991–1995 period, the weak western component of long range transport winds during high ozone days in the States east and north of Colorado provides evidence that NO<sub>x</sub> emissions from Colorado are unlikely to contribute significantly to violations of the 1997 ozone NAAQS in the Illinois/Wisconsin counties along the southwestern shores of Lake Michigan.

Additional circumstantial evidence supporting this conclusion is found in technical documentation developed in recent years by the States of Kansas and Wisconsin. To support its Interstate Transport SIP, the State of Kansas submitted to EPA Region 7 technical documentation that includes back trajectory analyses gauging the pathway of air masses impacting the Illinois/Wisconsin nonattainment area on the four days with highest ozone concentrations during each of the years 2005–2007. The back trajectory analyses in Appendix G of the technical support section show that, for the four days with the highest ozone readings, none of the pathways followed by air masses moving into the Chicago Metropolitan Statistical Area (MSA) or into several of the Wisconsin nonattainment counties came from Colorado. Since these back trajectories refer to the pathways of air masses and not specifically to ozone transport, the results of this analysis cannot be considered determinative as to the significant contribution of ozone or NO<sub>x</sub> from Colorado emissions to the nonattainment counties along the southwestern shores of Lake Michigan. However, the lack of any back trajectories from Colorado indicates that it is unlikely that NO<sub>x</sub> emissions from the State contribute significantly to the nonattainment of the Illinois/Wisconsin area.

Further support is given by a recent attainment demonstration by the Wisconsin Department of Natural Resources (WDNR) for the nonattainment counties along the southwestern shores of Lake Michigan.<sup>8</sup> The WDNR analysis identifies heavy industrial activity and dense urbanization as the major local contributors to the high ozone concentrations in the Indiana, Illinois and Wisconsin Counties along the southwestern shores of Lake Michigan. Between 40 and 60 percent of the maximum ozone concentrations in the Lake Michigan airshed is attributed to

<sup>4</sup> “State of Colorado Implementation Plan to Meet the Requirements of Clean Air Act Section 110(a)(2)(D)(i)(I)—Interstate Transport Regarding the 1997 8-hour Ozone Standard,” p. 17, December 12, 2009.

<sup>5</sup> *Ibid.*, pp. 8–9.

<sup>6</sup> The Wisconsin nonattainment areas for the 1997 8-hour ozone standard include: Door, Kewaunee, Manitowoc, Sheboygan, Ozaukee, Washington, Milwaukee, Waukesha, Racine and Kenosha counties; the Chicago nonattainment area includes Cook County and several adjacent Illinois and Indiana counties (69 FR 23858, April 30, 2004).

<sup>7</sup> Ozone Transport Assessment Group (OTAG), Air Quality Analysis Workgroup: “3.3 Climatology of Ozone Synoptic Scale Transport in the Eastern US,” Figures 1(a) and 5(a), pp. 3, 6, January 11, 1998. High ozone days were days with ozone concentrations in the 90th percentile.

<sup>8</sup> Wisconsin Department of Natural Resources, “Attainment Demonstration—The Wisconsin Counties of Kenosha, Racine, Milwaukee, Waukesha, Ozaukee, Washington, Sheboygan, Manitowoc and Door,” September 2009.

regional transport, occurring from emission sources located within a south-southwesterly arc spanning from 160 to 270 degrees (compass direction). Colorado's location at the western margins of this arc (Denver is approximately 260 degrees southwest of Chicago) substantially reduces the likelihood for NO<sub>x</sub> emissions from the State to contribute significantly to nonattainment in the Illinois/Wisconsin area.<sup>9</sup> Given the southerly orientation of regional transport winds in States east and north of Colorado, it is likely that Colorado ozone or NO<sub>x</sub> emissions would be heavily dispersed in a northward direction west of this nonattainment area.

Finally, by 2008, the 8-hour ozone design values for the Illinois and Wisconsin nonattainment counties along the shores of Lake Michigan fell below the level of the NAAQS, a reduction attributed to the implementation of State and Federal control measures since the designation of these counties as nonattainment in 2004. In other words, were there emissions from Colorado sources reaching the Illinois and Wisconsin counties along the western rim of Lake Michigan, they would no longer be significantly contributing to violations of the NAAQS in that area.<sup>10</sup>

The other nonattainment area, St. Louis and adjacent counties, is approximately 800 miles straight east from the Colorado DMA/NFR area. This substantial distance does not, in and by itself, exclude the possibility of significant contribution from Colorado's NO<sub>x</sub> emissions to nonattainment in the St. Louis area. However, it is also sufficient to provide many opportunities for ozone dispersion and removal from the atmosphere due to the effect of winds and chemical sink processes, and thus reduce the likelihood of significant contribution from Colorado to nonattainment in this area.

The impact of wind direction on ozone transport from Colorado to the St. Louis area is gauged through the results of several findings. Kansas, immediately east of Colorado and west of Missouri, is characterized by strong southerly surface winds that match prevailing regional transport winds, which have a southerly orientation during days of elevated ozone concentration. Throughout 2005 its winds averaged daily speeds slightly over 9 mph.<sup>11</sup> The OTAG modeling analysis referred to

earlier shows that, during the five years from 1991 to 1995, on high ozone days regional transport winds in Kansas and Missouri have a prevailing southerly orientation. To the extent that these results are representative of general ozone transport patterns not limited to the 1991–95 period, they indicate that ozone/NO<sub>x</sub> emissions from Colorado reaching Kansas or Missouri were very likely to be redirected northward and away from the St. Louis area, thus lessening the likelihood for a significant ozone contribution to nonattainment from Colorado.

Results from other studies are consistent with these tentative conclusions. In a study published by OTAG in 1997, the St. Louis area showed higher ozone concentrations (70 as compared with 55 ppb) on days with winds from the south or the east than on days with winds from the west (the general direction from Colorado) or southwest.<sup>12</sup> More recent back trajectory analyses gauging the pathway of air masses impacting St. Louis on days of high ozone allow similar conclusions. The State of Kansas' technical documentation supporting its Interstate Transport SIP (approved by EPA in March 2007) include back trajectory analyses independent of their source regions (i.e., Colorado or Kansas.) The results show that for each of the 2005–2007 years, on the four days with the highest ozone readings the frequency of trajectory "contribution" from Colorado to St. Louis was negligible. There is only one instance of a 500 meter trajectory from Colorado, while there were none for transport at 1500 meter of altitude.<sup>13</sup> These findings, in combination with the other circumstantial evidence examined above, strengthen the conclusion that it is unlikely that emissions from Colorado sources contribute significantly to the nonattainment of the St. Louis area.

As mentioned above, EPA must consider not only significant contribution to nonattainment areas, but also to areas with monitors showing violations of the NAAQS. A review of the AQS monitoring data for adjacent downwind states shows that it is highly unlikely that emissions from Colorado contribute significantly to downwind areas that have monitors showing violations of the 1997 8-hour ozone NAAQS. Between 1999 and 2008 there were no violations of the 1997 8-hour ozone NAAQS at any of the monitors in

adjacent downwind states, such as Kansas, Nebraska and Wyoming.

Design values for the years 2005–2007<sup>14</sup> show that in adjacent downwind states such as Kansas, Nebraska, and Wyoming, there were no violations of the 1997 8-hour ozone NAAQS, and that in most counties ozone levels remained substantially below the NAAQS. In Kansas, the 2007 design value for Trego County, the county with a monitoring station closest to Colorado, was 71 ppb, or 16 percent below the ozone NAAQS. The counties that had the highest design values are at or near the eastern edge of the state, about 400 miles from Colorado's eastern border, and their design values ranged from 76 ppb for Johnson and Sumner Counties to 77 ppb for Leavenworth and Wyandotte Counties. In Nebraska and Wyoming, the highest ozone design values did not exceed 69 ppb in Douglas County, Nebraska and 72 ppb in Sublette County, Wyoming.

The historical trend over the period 1998–2008 for the 1997 8-hour ozone design values in these states places the 2005–2007 data reviewed above in context. In Nebraska, ozone design values were consistently low throughout the period. In Wyoming, design values were also constant in most of the monitored areas, where ozone monitoring only began between 2003 and 2005. Kansas design values show a clear trend of declining ozone levels from the late 1990s to the most recent years. In Linn, Sedgwick, and Sumner Counties, design values decreased from highs ranging between 77 and 82 ppb during 2000–2003 to levels ranging between 66 and 75 ppb in 2006–2008.

The data and weight of evidence analysis presented above support the conclusion of the Colorado Interstate Transport SIP (adopted into the State SIP on December 30, 2008 and submitted to EPA June 18, 2009) that emissions from Colorado do not contribute significantly to nonattainment in any other state for the 1997 8-hour ozone NAAQS, consistently with the requirements of element (1) of CAA section 110(a)(2)(D)(i).

## VI. Proposed Action

EPA is proposing partial approval of the Colorado SIP to meet the requirements of Section 110(a)(2)(D)(i)(I) regarding the 1997 ozone standard. Specifically, in this action EPA is proposing to approve only the language and demonstration that, in this SIP revision, address the requirements of element (1): Prohibition of significant

<sup>9</sup> *Ibid.*, p. 51.

<sup>10</sup> *Ibid.*

<sup>11</sup> See the January 4, 2007 State of Kansas submittal to EPA of Interstate Transport SIP revisions, Document ID# EPA-R07-OAR-2007-0141-0003, pp. 6–7.

<sup>12</sup> OTAG, "Ozone as Function of Local Wind Speed and Direction: Evidence of Local and Regional Transport," p. 33, July 26, 1997.

<sup>13</sup> Document ID# EPA-R07-OAR-2007-0141-0003, Appendix G.

<sup>14</sup> See Table 4, pages 7 and 8, of the Colorado Interstate Transport SIP.

contribution to nonattainment of the 1997 8-hour ozone NAAQS in any other state. At a later date, EPA will act on the language and demonstration addressing element (2): prohibition of interference with maintenance of the 1997 8-hour ozone NAAQS in any other state.

## VII. Statutory and Executive Order Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission 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 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Pub. L. 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

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

Dated: March 18, 2010.

**Carol L. Campbell,**

*Acting Deputy Regional Administrator, Region 8.*

[FR Doc. 2010-6893 Filed 3-30-10; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[EPA-R06-RCRA-2009-0549; SW-FRL-9131-6]

### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

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

**ACTION:** Proposed rule and request for comment.

**SUMMARY:** EPA is proposing to grant a petition submitted by Tokusen USA, Inc. (called just Tokusen hereinafter) to exclude (or delist) a wastewater treatment plant (WWTP) sludge filter cake (called just sludge hereinafter) generated by Tokusen in Conway, AR from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

EPA bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, EPA would conclude that Tokusen's petitioned waste is non-hazardous with respect to the original listing criteria. EPA would also

conclude that Tokusen's process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

**DATES:** We will accept comments until April 30, 2010. We will stamp comments postmarked after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decision.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-RCRA-2009-0549 by one of the following methods:

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

2. *E-mail:* [kim.youngmoo@epa.gov](mailto:kim.youngmoo@epa.gov).

3. *Mail:* Youngmoo Kim, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD-C, 1445 Ross Avenue, Dallas, TX 75202.

4. *Hand Delivery or Courier:* Deliver your comments to: Youngmoo Kim, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD-C, 1445 Ross Avenue, Dallas, TX 75202.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-RCRA-2009-0549. 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 [www.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