

Dated: March 15, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2010-0945; FRL-9281-6]

Approval and Promulgation of Implementation Plans; Nebraska: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the State Implementation Plan (SIP) for Nebraska, submitted by the Nebraska Department of Environmental Quality (NDEQ) to EPA for final processing on January 14, 2011. These revisions cover two broad categories under Nebraska's prevention of significant deterioration (PSD) preconstruction permitting program. The first applies to revisions relating to permitting of greenhouse gas (GHG) emissions under the PSD program. The second applies to revisions incorporating relevant aspects of EPA's 2002 new source review (NSR) reform rules, submitted by letter dated November 19, 2010.

The GHG SIP revision, which incorporates updates to NDEQ's air quality regulations, includes two significant changes impacting the regulation of GHGs under Nebraska's PSD program. First, the SIP revision provides the State of Nebraska with authority to issue PSD permits governing GHGs. Second, the SIP revision establishes emission thresholds for determining which new stationary sources and modification projects become subject to Nebraska's PSD permitting requirements for their GHG emissions. The first provision is required under the GHG PSD SIP call, which EPA published on December 13, 2010, and which required the State of Nebraska to apply its PSD program to GHG-emitting sources. The second provision is consistent with the thresholds EPA established in the Tailoring Rule, published on June 3, 2010. EPA is approving this SIP revision because this SIP revision meets the requirements of the GHG PSD SIP Call.

In addition, in today's action, EPA is also taking final action to approve

Nebraska's adoption of portions of EPA's 2002 NSR Reform rules, published December 31, 2002. EPA has determined that Nebraska's revisions track the Federal NSR Reform Rules. EPA previously determined that the implementation of the Federal NSR Reform Rules will be environmentally beneficial.

DATES: This rule will be effective March 22, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R07-OAR-2010-0945. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information 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 through <http://www.regulations.gov> or in hard copy at the Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, KS 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Nebraska SIP, contact Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Mr. Gonzalez's telephone number is (913) 551-7041; e-mail address: gonzalez.larry@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. What is the background for today's final action?
- II. Analysis of Nebraska's SIP Revision
- III. What is EPA's response to comments received on the proposed action?
- IV. What is the effect of today's final action?
- V. When is today's action effective?
- VI. Final Action
- VII. Statutory and Executive Order Reviews

I. What is the background for today's final action?

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part

distinct from one another, establish the overall framework for today's final action for the Nebraska SIP. The first four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,¹ the "Johnson Memo Reconsideration,"² the "Light-Duty Vehicle Rule,"³ and the "Tailoring Rule."⁴ Taken together, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subject GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis.

In a separate action, the "GHG PSD SIP Call,"⁵ EPA called on the State of Nebraska and 12 other States with SIPs that do not provide authority to issue PSD permits governing GHGs to revise their SIPs to provide such authority. In that action, EPA took steps to ensure that in the 13 States that do not have authority to issue PSD permits to GHG-emitting sources at present, either the State or EPA would have the authority to issue such permits by January 2, 2011, or soon thereafter. EPA explained that although for most States, either the State or EPA is already authorized to issue PSD permits for GHG-emitting sources as of that date, Nebraska and the other 12 States have EPA-approved PSD programs that do not include GHG-emitting sources and therefore do not authorize these States to issue PSD permits to such sources. Accordingly, EPA issued the GHG PSD SIP Call to require a SIP revision that applies Nebraska's SIP PSD programs to GHG-emitting sources. EPA also established a SIP submittal deadline. In the proposed SIP call, EPA had stated that the deadline could range from as little as three weeks after the final SIP call was signed to as long as 12 months after the

¹ "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

² "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

³ "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

⁴ "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

⁵ "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call; Final Rule." 75 FR 77698 (December 13, 2010).

final SIP call was signed, and that each affected State was authorized to indicate to EPA a deadline to which it did not object. In the final SIP call, EPA established deadlines that ranged, for the various States, from December 22, 2010 (three weeks after signature), to December 1, 2011 (12 months after signature), based, in general, on each State's preference. Nebraska was one of the States for which EPA proposed and finalized the SIP Call. The State's comments regarding the proposed SIP call, submitted September 30, 2010, are included in the docket for this rulemaking. In the SIP call, EPA established a SIP submittal deadline for Nebraska of March 1, 2011, in accordance with Nebraska's preferences in that letter. As stated previously, Nebraska met this deadline by submitting a final rule addressing the SIP deficiency by letter dated January 14, 2011.

In addition, in the SIP call rulemaking, EPA stated certain requirements that the corrective SIP revision must meet, which are that the corrective SIP revision must—

- (i) Apply the SIP PSD program to GHG-emitting sources;
- (ii) Define GHGs as the same pollutant to which the Light-Duty Vehicle Rule⁶ (LDVR) applies, that is, a single pollutant that is the aggregate of the group of six gases (carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆)); and
- (iii) Either limit PSD applicability to GHG-emitting sources by adopting the applicability thresholds included in the Tailoring Rule or adopt lower thresholds and show that the State has adequate personnel and funding to administer and implement those lower thresholds.

In addition, if the corrective SIP revision adopts the Tailoring Rule thresholds, then it must either adopt the CO₂e metric and use short tons (as opposed to metric tons) for calculating GHG emissions in order to implement those thresholds, or assure that its approach is at least as stringent as under the Tailoring Rule, so that the State does not exclude more sources than under the Tailoring Rule. 75 FR 77713 to 77715.

On October 19, 2010, in response to the Tailoring Rule and earlier GHG-related EPA rules, and in anticipation of the GHG PSD SIP Call rulemaking, NDEQ submitted a draft revision of its

air quality regulations to EPA for approval into the Nebraska SIP to: (1) Provide the State of Nebraska with the authority to regulate GHGs under its PSD program; and (2) establish appropriate emission thresholds and time-frames for determining which new or modified stationary sources become subject to Nebraska's PSD permitting requirements for GHG emissions. Subsequently, on December 27, 2010, EPA published a proposed rulemaking to approve NDEQ's October 19, 2010, SIP revision under parallel processing (see 75 FR 81179).

EPA's December 27, 2010, proposed approval was contingent upon the State of Nebraska providing a final SIP revision that was substantially the same as the draft revision proposed for approval. On January 14, 2011, Nebraska submitted its final SIP revision. This SIP revision is the same as the proposed revision NDEQ submitted on October 19, 2010, for parallel processing. EPA is approving the final SIP revision in today's action.

In the December 27, 2010, proposed rulemaking, EPA also proposed to approve updates to Nebraska's SIP that reflected Nebraska's adoption of portions of EPA's 2002 NSR Reform Rules. In today's action EPA is also approving these NSR Reform updates.

II. Analysis of Nebraska's SIP Revision

Section 110(k)(3) of the CAA provides that EPA shall approve a SIP revision as a whole if it meets all of the applicable requirements of the CAA. Nebraska received a SIP call because its PSD program does not apply to GHGs, and as a result, Nebraska is required to submit a SIP revision that applies PSD to GHGs and does so either at the Tailoring Rule thresholds or at lower thresholds, and, if the latter, then Nebraska is required to demonstrate that it has adequate resources for implementation.

Nebraska has submitted a SIP revision that provides this authority. Nebraska's SIP revision updates the definition in its regulations of "regulated NSR pollutant" to explicitly include GHGs as a regulated NSR pollutant. In addition, the Nebraska rules incorporate the same thresholds and phase-in schedule as the Tailoring Rule and they adopt the carbon dioxide equivalent (CO₂e) metric and use of short tons for determining the thresholds.

EPA has determined that Nebraska's GHG revisions meet the requirements of the SIP call and are consistent with the CAA and its implementing regulations regarding GHG.

In addition, EPA is also approving the portion of Nebraska's SIP revisions which address portions of EPA's 2002

NSR Reform rules. As EPA explained in the proposed rulemaking, Nebraska had previously made changes to its existing State regulations to adopt portions of the NSR Reform rules. 75 FR 81185.⁷ Although these revisions were effective at the State level, NDEQ had not previously submitted these changes to EPA for approval into the Nebraska SIP. Thus, on November 19, 2010, NDEQ submitted these revisions to the Nebraska Administrative Code relating to NSR Reform to EPA for approval. These revisions included changes to the following Chapters of Title 129 of the Nebraska Administrative Code: Chapter 1 (*Definitions*), Chapter 2 (*Definition of Major Source*), Chapter 14 (*Permits: Public Participation*), Chapter 15 (*Permit Revisions; Reopening for Cause*), Chapter 17 (*Construction Permits—When Required*),⁸ and Chapter 19 (*Prevention of Significant Deterioration of Air Quality*).

Nebraska's proposed SIP revision addressing NSR reform tracks the Federal NSR Reform Rules, and as stated previously, EPA has determined that the implementation of the Federal NSR Reform Rules will be environmentally beneficial. See 68 FR 44620 and 63021. EPA explained its analysis of the Nebraska revisions in detail in the proposal, at 75 FR 81186, and incorporates that explanation by reference in this final action. Accordingly, EPA determines that these changes are consistent with the requirements of section 110(l).

III. What is EPA's response to comments received on the proposed action?

EPA received a single comment letter in response to the December 27, 2010, proposed rulemaking to approve revisions to Nebraska's SIP. These comments, provided by the Sierra Club, were supportive of Nebraska's proposed revisions and EPA's actions with respect to GHGs and the PSD and Title V GHG Tailoring Rule (75 FR 31514). The comments are provided in the docket for today's final action. EPA did not receive any comments on its proposal to approve the NSR reform revisions.

⁷ EPA also explained that Nebraska did not adopt the portions of EPA's NSR reform rule which were vacated or remanded by the Court in *New York v. United States*, 413 F.3d3 (DC Cir. 2005). 75 FR 81186.

⁸ EPA notes that in a subsequent letter dated February 1, 2011, NDEQ withdrew Chapter 17 (*Construction Permits—When Required*), sections 001.02T and 013.04T from the November 19, 2010 submittal. Those revisions, relating to construction permitting of minor (non-PSD) sources, define the term "chemical processing plant" as excluding ethanol production facilities. EPA is not acting on those provisions in this action.

⁶ "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

IV. What is the effect of today's final action?

Final approval of Nebraska's January 14, 2011, SIP revision will make Nebraska's SIP adequate with respect to PSD requirements for GHG-emitting sources. Today's approval will incorporate into the SIP the GHG emission thresholds for PSD applicability that were set forth in EPA's Tailoring Rule, ensuring that smaller GHG sources emitting below these thresholds will continue to not be subject to permitting requirements. Today's approval will also incorporate portions of EPA's 2002 NSR Reform Rules, as adopted by Nebraska, into the SIP. Pursuant to section 110 of the CAA, EPA is approving the changes made in Nebraska's January 14, 2011, proposed SIP revision into the State's SIP. However, as we noted in the proposed approval of Nebraska's submittal, 75 FR 81183, this action only addresses the State's revisions as they relate to the PSD program, including regulation of GHGs under the State's PSD program. We intend to act separately on the State's revisions to its Title V program, as well as Nebraska's separate submittal of changes to the applicability of the PSD program to contain ethanol production facilities (the "Ethanol Rule").⁹

The GHG revisions to Nebraska's SIP-approved PSD program that EPA is approving today have been reviewed and determined to be consistent with the Tailoring Rule. EPA has also determined that the GHG revisions are adequate to correct the deficiencies which EPA found for Nebraska in the GHG SIP call. Finally, EPA has also determined that the Nebraska SIP revisions relating to NSR Reform are, in substantive content, the same as EPA's December 2002 NSR reform rule, as it relates to PALs, the "actual to projected actual" test, and the calculation of baseline actual emissions. Thus, EPA has determined that the January revisions to Nebraska's SIP are consistent with section 110 of the CAA.

V. When is today's action effective?

The effective date of today's final action is the date that this rule is published in the **Federal Register**. In accordance with 5 U.S.C. 553(d), a rule cannot be made effective less than 30 days from the date of publication unless it qualifies for an exception under that provision. Under 5 U.S.C. 553(d)(1), one such exception is "a substantive rule which grants or recognizes an exemption or relieves a restriction."

Today's final action relieves a restriction because it allows Nebraska to issue permits, under the Federally approved SIP, to sources which are already required to have PSD permits covering GHGs, but which previously did not have a permit issuing authority available from which to seek such a permit. In addition, 5 U.S.C. 553(d)(3) allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." Because, as stated above, this rule allows Nebraska to issue PSD permits under the approved SIP for sources of GHGs already required to seek such permits, it avoids disruption in the State's permitting process which might otherwise occur. Additionally, the State's permitting process would potentially be disrupted if the NSR Reform provisions do not have the same effective date as the other provisions being approved today. Therefore, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective immediately upon publication. For these reasons, the effective date of this rule is the date of publication.

VI. Final Action

EPA is taking final action to approve the State of Nebraska's SIP revisions, which adopt changes to Title 129 the Nebraska Administrative Code. The SIP revisions: (1) Provide the State with the authority to regulate GHGs under its PSD program, and (2) establish appropriate emissions thresholds, and timing, for determining PSD applicability with respect to new or modified GHG-emitting stationary sources in accordance with EPA's Tailoring Rule. The SIP revisions also adopt portions of EPA's 2002 NSR Reform rule as identified above. EPA has made the determination that the SIP revisions are approvable because they are in accordance with the CAA and EPA regulations, including regulations pertaining to PSD permitting.

VII. Statutory and Executive Order Reviews

Under the CAA, 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 CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For those reasons, 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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this 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.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it

⁹ See note 9.

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 2011. 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, NSR Reform, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 7, 2011.

Karl Brooks,

Regional Administrator, Region 7.

40 CFR part 52 is amended 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 CC—Nebraska

■ 2. Section 52.1420(c) under “*Title 129—Nebraska Air Quality Regulations*” is amended as follows:

■ a. Revise the entries for 129–1, 129–14, 129–15, 129–17, and 129–19.

■ b. Add a new entry for 129–2.

The revisions and additions read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEBRASKA REGULATIONS

Nebraska citation	Title	State effective date	EPA approval date	Explanation
* * * * *				
Title 129—Nebraska Air Quality Regulations				
129–1	Definitions	01/09/2011	03/22/2011	[Insert citation of publication].
129–2	Definition of Major Source	03/14/2006	03/22/2011	[Insert citation of publication].
* * * * *				
129–14	Permits: Public Participation	02/06/2008	03/22/2011	[Insert citation of publication].
129–15	Permit Revisions; Reopening for Cause.	02/06/2008	03/22/2011	[Insert citation of publication].
* * * * *				
129–17	Construction Permits—When Required.	02/06/2008	03/22/2011	[Insert citation of publication]. Approval does not include Nebraska’s revisions to sections 001.02T and 013.04T pertaining to ethanol production facilities, which were not submitted by the State.
129–19	Prevention of Significant Deterioration of Air Quality.	02/06/2008	03/22/2011	[Insert citation of publication].
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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2005–0161; FRL–9284–2]

40 CFR Part 80

Denial of Petitions for Reconsideration of Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of denial of petitions for reconsideration.

SUMMARY: On May 24, 2010, the Clean Air Task Force (CATF), the National Wildlife Federation, the World Wildlife Fund and the Friends of the Earth petitioned the Administrator to reconsider an EPA rule, published on March 26, 2010 (75 FR 14670), which amended the Renewable Fuel Standard Program pursuant to Clean Air Act section 211(o). The petitioners alleged that EPA failed to properly require producers of renewable fuels to verify domestic crops and crop residues used to produce the renewable fuels complied with the applicable land use

restrictions. Additionally, the CATF alleged that EPA did not properly account for the “global rebound effect” in the final analysis of the lifecycle greenhouse gas (GHG) emission impacts of renewable fuel production and use. On February 17, 2011, the Administrator denied the petitions for reconsideration and the accompanying requests for stays in implementing the regulations. This Notice announces the availability of EPA’s decision.

DATES: EPA’s denials of the petitions to reconsider were issued by letters dated February 17, 2011.

FOR FURTHER INFORMATION CONTACT: Paul Argyropoulos in the EPA’s Office of