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Dated: March 22, 2019.

**Lowell J. Schiller,**

*Acting Associate Commissioner for Policy.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2018-0026; FRL-9991-25-Region 8]

### Approval and Promulgation of Air Quality Implementation Plans; North Dakota; Revisions to Air Pollution Control Rules

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of North Dakota on January 28, 2013, and November 11, 2016. The revisions include amendments to North Dakota's general provisions, permit to construct, prevention of significant deterioration (PSD) of air quality, oil and gas, and fee regulations. In addition, amendments to the permit program include the regulation of hazardous air pollutants (HAPs), which may be regulated under section 112 of the Clean Air Act (CAA). Thus, the EPA is taking this action pursuant to sections 110 and 112 of the CAA.

**DATES:** This rule is effective on April 29, 2019.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2018-0026. All documents in the docket are listed on the <http://www.regulations.gov> website. 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, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact

the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Jaslyn Dobrahner, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6252, [dobrahner.jaslyn@epa.gov](mailto:dobrahner.jaslyn@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Background

In our notice of proposed rulemaking published on May 14, 2018 (83 FR 22227), the EPA proposed to approve revisions to North Dakota's Air Pollution Control Rules submitted by the State of North Dakota on January 28, 2013, and November 11, 2016. In this rulemaking, we are taking final action to approve various revisions, including: To add a general permit to construct provision,<sup>1</sup> update the definition of "volatile organic compounds" and PSD rules; revise permit to construct and PSD public participation methods; clarify applicability of oil and gas regulations; increase the application and processing fees; add a significant emission rate for greenhouse gas carbon dioxide equivalent; add a definition of "actively producing" oil and gas wells; remove greenhouse gas provisions relating to the determination of a major source and major modification; remove the expired exemption of greenhouse gases from biogenic sources; and streamline a provision related to oil and gas registration and reporting. The North Dakota State Health Council adopted the amendments on August 14, 2012, (effective January 1, 2013) and February 24, 2016, (effective July 1, 2016) for the January 28, 2013, and November 11, 2016, submittals, respectively. The reasons for our

<sup>1</sup>North Dakota Air Pollution Control (NDAC) rule 33-15-14-02.1.c reads in its entirety as follows, "General permits. The department may issue a general permit to construct covering numerous similar sources which are not subject to permitting requirements under chapter 33.1-15-13 or 33.1-15-15 or subpart B of section 33.1-15-22-03. Any general permit shall comply with all requirements applicable to other permits to construct and shall identify criteria by which sources may qualify for the general permit. A proposed general permit, any changes to a general permit, and any renewal of a general permit is subject to public comment. The public comment procedures under subdivision b of subsection 6 shall be used. To sources that qualify, the department shall grant the conditions and terms of the general permit. Sources that would qualify for a general permit must apply to the department for coverage under the terms of the general permit or apply for an individual permit to construct. Without repeating the public participation procedures under subdivision b of subsection 6, the department may grant a source's request for authorization to construct under the general permit."

approval are provided in detail in the proposed rule. Additional reasons for our approval of some provisions are provided below in response to public comments received on those topics.

#### II. Response to Comments

We received two comment letters during the public comment period. After reviewing the comments, the EPA determined that the comments in the first letter are outside the scope of our proposed action and fail to identify any material issue necessitating a response. The remaining comments in the second letter were jointly submitted by the Sierra Club, Center for Biological Diversity, and the National Parks Conservation Association. Below is a summary of the comments and the EPA's responses.

**Comment:** In general, the commenters assert that the concept of a general construction permit is not consistent with the requirements of Section 110(a)(2)(C) of the CAA or 40 CFR 51.160–51.164 due to the nature of how general permits are established and how sources request coverage under general permits.

**Response:** We disagree with the commenters' assertion that the concept of a general construction permit is not consistent with the requirements of Section 110(a)(2)(C) of the CAA (requirement that the state SIP contain a program for enforcement of control measures), and 40 CFR 51.160–51.164 (the EPA's regulations relating, in part, to minor source construction). The State's source-specific minor source construction permit program was originally approved as meeting the criteria currently in 40 CFR 51.160–51.163 on May 26, 1977, (42 FR 26977) and as meeting the criteria in 40 CFR 51.164 on November 14, 1988, (53 FR 45763). The North Dakota's SIP-approved minor source construction permit program and other permitting rules are codified at North Dakota Air Pollution Control (NDAC) 33-15-14, *Designated Air Contaminant Sources Permit to Construct Minor Source Permit to Operate, Title V Permit to Operate*.

North Dakota's general permit rule requires that "[a]ny general permit shall comply with all requirements applicable to other permits to construct." Therefore, a general permit would be issued in accordance with essentially the same State rules that apply to sources seeking source-specific permits. The general permit to construct provision specifically excludes major sources subject to permitting requirements under chapter 33-15-13 (*Emission Standards for Hazardous Air*

Pollutants), 33–15–15 (*Prevention of Significant Deterioration of Air Quality*), or subpart B of 33–15–22–03 (*Emissions Standards for Hazardous Air Pollutants for Source Categories*). Therefore, the general permit rule provides the State with the authority to develop general permits, including for the following three minor source categories: (1) Minor sources of criteria pollutants (potential emissions below the major source thresholds in 33–15–15, true minor sources); (2) minor sources of hazardous air pollutants (potential emissions below the major source thresholds in 33–15–13 and 33–15–22–03, true minor sources); and (3) sources of either criteria or hazardous air pollutants that elect to apply for general permits to limit emissions below major source thresholds (synthetic minor sources).

The EPA has a well-established, longstanding position that the use of general permits for construction of all three categories of minor sources is appropriate under the CAA. The EPA has noted, for example, that an advantage of a SIP general permit is that upon approval by the EPA of the state's general permit program, a general permit could be written for additional source types without triggering the need for the formal SIP revision process.<sup>2</sup> On numerous occasions, the EPA has approved SIPs allowing for the issuance of general permits, including a general permit rule similar to North Dakota's general permit regulations.<sup>3</sup> Moreover,

<sup>2</sup> For example, *Guidance on Enforceability Requirements for Limiting the Potential to Emit through SIP and § 112 Rules and General Permits*. January 25, 1995 (EPA 1995 Enforceability Memo) (For example, page 4 of the memo explains that a general permit is a single permit that establishes terms and conditions that must be complied with by all sources subject to that permit. The establishment of a general permit could provide for emission limitations in a one-time permitting process, and thus avoid the need to issue separate permits for each source. Although this concept is generally thought of as an element of Title V permit programs there is no reason that a state or local agency could not submit a general permit program as a SIP submittal aimed at creating synthetic minor sources. Additionally, FESOP [Federally Enforceable State Operating Permit usually referring to Title I State Operating Permit Programs approved under the criteria established by the EPA in the June 28, 1989 **Federal Register** notice, 54 FR 27274] programs can include general permits as an element of the FESOP program being approved into the SIP. The advantage of a SIP general permit is that upon approval by the EPA of the state's general permit program, a general permit could be written for an additional source type without triggering the need for the formal SIP revision process. (citing the Jan. 25, 1995 Seitz and Van Heuvelen memorandum, "Options for Limiting Potential to Emit (PTE) of a Stationary Source under section 112 and title V of the Clean Air Act", page 4). <https://www.epa.gov/sites/production/files/2015-08/documents/potoem.pdf>.

<sup>3</sup> EPA approved Michigan's general permit rule. See Michigan SIP submittal, April 3, 1998 (in docket) and 83 FR 44485 (August 31, 2018).

in 2011, the EPA published rules finalizing a Federal Implementation Plan for Indian country and setting forth provisions for the review of new sources and modifications in Indian country, including minor sources.<sup>4</sup> There, the EPA authorized the issuance of general permits in Indian country in appropriate circumstances. The EPA explained that a 'general permit' is a preconstruction permit that may be applied to several similar emissions units or minor sources. The purpose of a general permit is to simplify the permit issuance process for similar facilities so that a reviewing authority's limited resources need not be expended for site-specific permit development for such facilities. A general permit may be written to address a single emissions unit, a group of the same type of emissions units or an entire minor source. General permits offer a cost-effective means of issuing permits and provide a quicker and simpler alternative mechanism for permitting minor sources than the site-specific permitting process discussed previously.<sup>5</sup> Subsequently, in accordance with this general authorization, the EPA issued general permits for various categories of minor sources in Indian country. General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories, 80 FR 25068 (May 1, 2015); General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Six Source Categories, 81 FR 70944 (Oct. 14, 2016).

The EPA has also issued other memoranda supportive of general permits, including the EPA's January 25, 1995 memorandum "Options for Limiting Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act"<sup>6</sup> (EPA 1995 Memorandum Options to Limit Potential to Emit) and the April 14, 1998 memorandum, "Potential to Emit (PTE) Guidance for Specific Source Categories."<sup>7</sup> These memoranda endorse the use of a general permit program approved into the SIP pursuant to Section 110(a)(2)(C) of the Act as a means of effectively establishing limitations on the potential to emit of

<sup>4</sup> 76 FR 38748 (July 1, 2011).

<sup>5</sup> *Id.* at 38767.

<sup>6</sup> *Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)*. January 25, 1995. <https://www.epa.gov/sites/production/files/documents/limit-pte-rpt.pdf>.

<sup>7</sup> *Potential to Emit (PTE) Guidance for Specific Source Categories*. April 14, 1998. <https://www.epa.gov/sites/production/files/2015-08/documents/lowmarch.pdf>.

stationary sources.<sup>8</sup> As explained in the EPA's January 25, 1995 memorandum "Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits" (EPA 1995 Guidance) a general permit is a single permit that establishes terms and conditions that must be complied with by all sources subject to that permit, providing for emission limitations in a one-time permitting process and avoiding the need to issue separate permits for each source that shares the same characteristics.<sup>9</sup>

*Comment:* The commenters express concern that North Dakota's general permit to construct regulations do not specify how a source applies for coverage under a general permit (*i.e.*, what source-specific information, if any, is required to be in a permit application) or how the state will evaluate if a source qualifies for a general permit.

*Response:* We disagree with these concerns. Similar to the EPA's federal minor source general permit in Indian country,<sup>10</sup> North Dakota's general permit rule requires that each general permit to construct "shall identify the criteria by which sources may qualify for the general permit" and the State will use those criteria to evaluate whether a source qualifies for the general permit. The nature of the general permit to simplify the permit issuance process for similar facilities so that a reviewing authority's limited resources need not be expended for case-by-case permit development does not provide for the same source-specific procedures as an individual permit to construct. However, North Dakota will provide sufficient public participation opportunities through public comment on the general permit under NDAC 33–15–14–02.

*Comment:* The commenters suggested that, because North Dakota's general permit to construct regulations do not require public notice and an opportunity to review and comment on (1) source-specific information submitted by sources requesting coverage under the general permit, and (2) North Dakota's analysis and justification for coverage under a general permit, it does not comply with the requirements of 40 CFR 51.161.

<sup>8</sup> See also, *Approaches to Creating Federally-Enforceable Emission Limits*. November 3, 1993. <https://www.epa.gov/sites/production/files/2015-08/documents/fedenf.pdf>.

<sup>9</sup> *Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits*. (January 25, 1995). <https://www.epa.gov/sites/production/files/2015-08/documents/potoem.pdf>.

<sup>10</sup> 40 CFR 49.156(d).

*Response:* We disagree with the commenters' assertions that the general permit rule does not comply with public notice provisions found in 40 CFR 51.161. As explained in our proposal, the EPA's June 28, 1989 rulemaking "Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans"<sup>11</sup> and the EPA 1995 Guidance, outline the criteria we use to evaluate general permit to construct rules under the SIP authority or under § 112, or both. One of the criteria addresses the public notice and comment requirements explaining that since the state rule establishing the general permit program does not provide for specific standards to be met by the source, each general permit, but not each application under each general permit, must be issued pursuant to public and EPA notice and comment.<sup>12</sup> North Dakota's general permits must be made available for public comment, and therefore, meet the EPA's public notice and comment requirements for general permits. North Dakota's analysis and justification for issuing a general permit, as it does for a source-specific permit, will include information that pertains to the type of sources that are eligible for coverage by the general permit and that information will be included in the public notice. The public will have an opportunity to review the conditions of the general permit and comment on whether those conditions are appropriate for sources with the characteristics of those eligible for coverage under the general permit. Therefore, the EPA does not agree that the general permitting process would deny the public an opportunity to review and comment, as the public will have an opportunity to comment on the general permit conditions and the State's justification for establishing the general permit for particular source categories (as well as the State's specified criteria for evaluating whether specific sources are covered by the general permit) as a part of the public notice and comment on the general permits.

*Comment:* The commenters argue that; although North Dakota's general permit to construct regulations are similar to the general permit provision of the Title V operating permits found at 40 CFR 70.6(d) that is commonly used to reduce the administrative burden for the source type and state permitting

agency for the issuance of operating permits; construction permits are required to include a source-specific and site-specific review of impacts on ambient air quality. Thus, North Dakota's general permit to construct regulations, according to the commenters, do not meet the applicable federal and CAA requirements because the State's air impact analysis for issuance of a general construction permit for a source category does not take into account site-specific factors that could affect how a particular source requesting coverage under the general construction permit would affect air quality, and in particular, whether the proposed source could interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS).

*Response:* We disagree. General permits must be based on a review of impacts on ambient air quality from the types of sources with the characteristics of those that are eligible for coverage under the permit. The North Dakota general permit rule requires that "[a]ny general permit shall comply with all requirements applicable to other permits to construct." North Dakota's construction permitting SIP requirements for source specific permits includes review of impacts on ambient air quality.<sup>13</sup> Thus, when developing a general permit, the State must evaluate whether the type of sources eligible for coverage under the general permit would interfere with attainment or maintenance of the NAAQS in the area to which the general permit applies. Furthermore, the public will have an opportunity to review and comment on this information as part of the general permit public notice process.<sup>14</sup>

*Comment:* The commenters state that nothing in North Dakota's general permit to construct regulations

<sup>13</sup> For example, NDAC 33.1-15-14-02.4, *Submission of plans—Deficiencies in application*, provides that as part of a source application for a permit the department may require submission of the effects on ambient air quality. NDAC 33.1-15-14-02.5, *Review of application—Standard for granting permits to construct*, requires the department to determine whether the proposed project will be in accord with the article, among other requirements, including whether the operation of any new stationary source at the proposed location will cause or contribute to a violation of any applicable ambient air quality standard.

<sup>14</sup> Discussing state general permit programs, the EPA previously explained that "since the rule establishing the program does not provide the specific standards to be met by the source, each general permit containing the criteria by which sources may qualify for the general permit, but not each application under each general permit, must be issued pursuant to public and the EPA notice and comment." EPA 1995 Enforceability Memo, page 10.

specifically state that North Dakota will deny coverage under a general construction permit if a source will cause or contribute to a NAAQS violation, and that the EPA overstated North Dakota's cited laws and regulations to deny approval of a proposed project under a general permit to construct. According to the commenters, NDAC 33-15-14-02.7, which provides when the state would deny a construction permit, does not apply to sources requesting coverage under the general permit to construct because 33-15-14-02.7 refers to public comment received and sources requesting coverage under a general permit to construct do not require public notice and comment. Thus, the commenters suggest that North Dakota's rules do not provide legally enforceable procedures ensuring the State will prohibit the construction of a source requesting coverage under a general permit to construct if it would interfere with attainment or maintenance of the NAAQS.

*Response:* We disagree. Before a general permit is issued, an analysis must be conducted, under 33-15-14-02.5, to determine whether the category of covered sources permitted under the permit have emissions so low that they are generally not expected to have adverse air quality impacts and will therefore comply with all applicable rules. NDAC 33-15-14-02.7 also requires that North Dakota deny coverage under a general permit if, after review of all information received (including public comment), a source would interfere with the attainment or maintenance of a NAAQS.<sup>15</sup>

*Comment:* The commenters expressed concern that the general permit to construct regulations do not define "similar source" to narrow what sources can be covered under the general construction permit, nor does the State rule provide that, to be similar, a source must have similar emissions and stack parameters.

*Response:* We disagree that there is a need to define "similar source" in this rule. The identified terms, including this one, have their common meaning in the context of the rule. In the case of general permits, the State will define the scope of the stationary sources covered by a particular general permit when establishing the criteria for sources eligible for and terms of the general permit. Moreover, all interested parties will have the opportunity to provide input on the appropriateness of the criteria defining the scope of the permit, including the emissions and stack

<sup>15</sup> 40 CFR 49.155(a)(7)(ii).

<sup>11</sup> 54 FR 27274 (June 28, 1989).

<sup>12</sup> *Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits*. (January 25, 1995), page 10, referencing June 28, 1989, **Federal Register**, 54 FR 27274, 27281-27284.

parameters of sources covered by the permit, during the public comment period for that permit.

*Comment:* The commenters also argue that North Dakota's May 3, 2018 letter to the EPA acknowledges that the general permits to construct regulations will not adequately address air quality concerns unique to specific areas that arise after issuance of the general permit to construct.

*Response:* We disagree. In fact, North Dakota's letter merely confirms the requirements in NDAC 33–15–02–07, to not cause or permit the emissions of contaminants in such a manner that causes or contributes to a violation of the ambient air quality standards, apply to individual sources covered under general permits. As previously stated, before a general permit is issued, an analysis must be conducted, under NDAC 33–15–14–02.5, to determine whether the category of covered sources under the general permit have emissions sufficiently low that they are generally not expected to have adverse air quality impacts and will therefore comply with all applicable rules. Thus, the State will consider any air quality concerns unique to specific areas that arise both before (33–15–14–02.5) and after (33–15–02–07) issuance of the general permit and not grant coverage to a source if there are air quality concerns.

*Comment:* With respect to the general permit to construct regulations, the commenters assert that the EPA cannot rely on North Dakota's May 3, 2018 letter as to how it may implement the general permit to construct rule to ensure the requirements of 40 CFR 51.160 are met because 40 CFR 51.160(a) states that the SIP "must set forth legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in a violation of the control strategy or interfere with attainment or maintenance of the NAAQS." Thus, the EPA cannot simply rely on statements made by North Dakota in a letter as satisfying the requirements for legally enforceable procedures.

*Response:* While we agree with the commenters that the EPA cannot rely on non-regulatory statements for legally enforceable procedures, we disagree that

North Dakota's general permit to construct regulations, which become federally enforceable upon the EPA's approval into the SIP, do not contain legally enforceable procedures to determine if the construction or modification of a facility seeking coverage under a general permit will interfere with attainment or maintenance of the NAAQS. The May 3, 2018 letter is not itself legally enforceable, but it references provisions in North Dakota's regulations that are enforceable and provide the authority described. As noted previously, NDAC 33–15–14–02.1.c requires that general permits use the same procedures that apply to source-specific permits in North Dakota's minor source permitting program, which the EPA previously approved as meeting the requirements of 40 CFR 51.160–51.164. These authorities include the ability for North Dakota, under 33–15–14–02.5.a and 33–15–14–02.7, to deny coverage under a general permit both before and after issuance of a general permit, respectively, to any applicant and require that a source apply for a source specific permit if it would interfere with attainment or maintenance of the NAAQS. Furthermore, facilities that cannot meet any of the conditions in the general permit, including minimum stack heights, emission limitations, control requirements, or other requirements in NDAC 33–15–14 necessary to assure compliance with the NAAQS, will not be eligible for coverage under the general permit and must apply for an individual permit to obtain authorization to construct.

*Comment:* In addition to the preceding comments regarding North Dakota's general permit to construct regulations, the commenters argue that the EPA's proposed approval of the amendments to 33–15–20 (*Control of Emissions from Oil and Gas Well Facilities*) expands applicability of North Dakota rule 33–15–20, which in turn exempts additional oil and gas facilities from construction permitting pursuant to North Dakota rule 33–15–14–02.13.o. They further comment that this expansion allows the construction of oil and gas facilities without requiring companies to provide analyses ensuring NAAQS and PSD increments are complied with, and not providing an opportunity for public notice and

comment. Thus, they suggest that North Dakota rule 33–15–20 as revised does not meet the preconstruction review requirements of 40 CFR 51.160–51.164.

*Response:* Although North Dakota broadened the applicability of Chapter 33–15–20 *Control of Emissions from Oil and Gas Well Production Facilities* to better reflect the entire contents of the chapter, practically speaking the revision did not, in fact, expand the number of oil and gas facilities subject to the chapter. Rather, the revision simply acknowledges that oil and gas facilities also emit air contaminants other than sulfur and sulfur compounds. Likewise, the revision acknowledges the expansive definition of a "production facility," which includes equipment, wells, flow lines, separators, treaters, tanks, flares, gathering lines, and auxiliary non-transportation-related equipment used in the exploration, development, or subsequent production or handling of oil and gas from an oil and gas well or wells which are located on one or more contiguous or adjacent surface properties and are under the control of the same person (or persons under common control). Thus, the commonality of the previous terms, "production facility" and "sulfur and sulfur compounds," historically ensured widespread applicability of Chapter 33–15–20 so that the revisions do not effectively increase the applicable sources.

*Comment:* Finally, the commenters expressed concern that there is no definition of "oil and gas well facility" in rule 33–15–20 or in any other North Dakota air pollution rule.

*Response:* We do not share the commenters' concern. North Dakota's regulations include definitions for the terms in the phrase "oil and gas well facility." Specifically, NDAC 33–15–20 includes definitions for "gas well," "natural gas or gas," "oil," "oil well," and "production facility," which are then used to derive the meaning of "oil and gas facility."

### III. Final Action

For the reasons expressed in the proposed rule, the EPA is approving revisions to North Dakota Air Pollution Control Rules, shown in Table 1, submitted by the State of North Dakota on January 28, 2013, and November 11, 2016.

TABLE 1—LIST OF NORTH DAKOTA AMENDMENTS THAT THE EPA IS APPROVING †

## Amended Section in the January 28, 2013 Submittal

33–15–14–02.1.c

## Amended Sections in the November 11, 2016 Submittal

33–15–01–04.52, 33–15–14–02.1.c, 33–15–14–02.6.b(2), 33–15–14–03.5.a(1)(b), 33–15–14–03.5.a(1)(d), 33–15–14–03.9.a, 33–15–14–03.9.b, 33–15–15–01.2, 33–15–20–01.1, 33–15–20–01.2, 33–15–20–02.1, 33–15–20–02.2, 33–15–20–03.1, 33–15–20–03.2, 33–15–23–02.1, 33–15–23–02.2

† On August 6, 2018, North Dakota submitted a SIP revision to recodify portions of North Dakota's Air Pollution Rules. We approved the recodifications that have been previously approved into the SIP (84 FR 1610; February 5, 2019). As explained in the EPA's subsequent **Federal Register** notice, the effective date for the recodification is April 30, 2019 (84 FR 826; March 7, 2019). If this action becomes effective after April 30, 2019, the regulatory text for this action will reflect the recodification of the rules. The crosswalk between the rule numbers approved in this action and North Dakota's recodification is available in the docket for the EPA's February 5, 2019 final action.

#### IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the North Dakota Air Pollution Control Rules described in the amendments set forth to 40 CFR part 52 below. Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110, 112, and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>16</sup> The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### V. Statutory and Executive Orders 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, the 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not 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 the 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, the SIP and authority approved under section 112(l) of the Act is not approved to apply on any Indian reservation land or in any other area

where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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. The 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 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 May 28, 2019. 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)).

<sup>16</sup> 62 FR 27968 (May 22, 1997).

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

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

Dated: March 22, 2019.

**Douglas Benevento,**  
Regional Administrator, Region 8.

40 CFR part 52 is amended to read as follows:

**PART 52 APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

■ 1. The authority citation for Part 52 continues to read as follows:

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

**Subpart JJ—North Dakota**

■ 2. Section 52.1820 paragraph (c) is amended as follows:

■ a. Under the heading “33–15–01. General Provisions,” revise the entry for 33–15–01–04.

■ b. Under the heading “33–15–14. Designated Air Contaminant Sources Permit to Construct Minor Source Permit to Operate Title V Permit to

Operate,” revise the entries for 33–15–14–02 and 33–15–14–03.

■ c. Under the heading “33–15–15. Prevention of Significant Deterioration of Air Quality,” revise the entry for 33–15–15–01.2.

■ d. Under the heading “33–15–20. Control of Emissions from Oil and Gas Well Production Facilities,” revise the entries for 33–15–20–01, 33–15–20–02, and 33–15–20–03.

■ e. Under the heading “33–15–23. Fees,” revise the entry for 33–15–23–02.

The revisions read as follows:

**§ 52.1820 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

| Rule No.   | Rule title   | State effective date | EPA effective date | Final rule citation/date                              | Comments   |
|--|--|----------------------|--------------------|---|--|
| <b>33–15–01. General Provisions</b>  |  |                      |                    |   |  |
| 33–15–01–04  | Definitions  | 7/1/16               | 4/29/2019          | [Insert <b>Federal Register</b> citation], 3/28/2019. |  |
| <b>33–15–14. Designated Air Contaminant Sources Permit to Construct Minor Source Permit to Operate Title V Permit to Operate</b> |  |                      |                    |   |  |
| 33–15–14–02  | Permit to construct  | 7/1/16               | 4/29/2019          | [Insert <b>Federal Register</b> citation], 3/28/2019. | Excluding subsections 1, 12, 13, 3.c., 13.b.1., 5, 13.c., 13.i(5), 13.o., and 19 (one sentence) which were subsequently revised and approved. See 57 FR 28619 (6/26/92), regarding State’s commitment to meet requirements of EPA’s “Guideline on Air Quality Models (revised).” |
| 33–15–14–03  | Minor source permit to operate.  | 7/1/16               | 4/29/2019          | [Insert <b>Federal Register</b> citation], 3/28/2019. |  |
| <b>33–15–15. Prevention of Significant Deterioration of Air Quality</b>  |  |                      |                    |   |  |
| 33–15–15–01.2  | Scope  | 7/1/16               | 4/29/2019          | [Insert <b>Federal Register</b> citation], 3/28/2019. | Except for the revision associated with 40 CFR 52.21(l)(1).  |
| <b>33–15–20. Control of Emissions from Oil and Gas Well Production Facilities</b>  |  |                      |                    |   |  |
| 33–15–20–01  | General provisions   | 7/1/16               | 4/29/2019          | [Insert <b>Federal Register</b> citation], 3/28/2019. |  |
| 33–15–20–02  | Registration and reporting requirements.   | 7/1/16               | 4/29/2019          | [Insert <b>Federal Register</b> citation], 3/28/2019. |  |
| 33–15–20–03  | Prevention of significant deterioration applicability and source information requirements. | 7/1/16               | 4/29/2019          | [Insert <b>Federal Register</b> citation], 3/28/2019. |  |

| Rule No.              | Rule title               | State effective date | EPA effective date | Final rule citation/date                              | Comments |
|-----------------------|--------------------------|----------------------|--------------------|---|----------|
| *                     | *                        | *                    | *                  | *   | *        |
| <b>33–15–23. Fees</b> |                          |                      |                    |   |          |
| *                     | *                        | *                    | *                  | *   | *        |
| 33–15–23–02 .....     | Permit to construct fees | 7/1/16               | 4/29/2019          | [Insert <b>Federal Register</b> citation], 3/28/2019. |          |
| *                     | *                        | *                    | *                  | *   | *        |

\* \* \* \* \*  
 [FR Doc. 2019–05935 Filed 3–27–19; 8:45 am]  
**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R04–OAR–2016–0213, EPA–R04–OAR–2014–0767, EPA–R04–OAR–2014–0426; FRL–9991–40–Region 4]

**Air Plan Approval; KY; Minor Sources Infrastructure Requirement for the 2012 PM<sub>2.5</sub>, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving portions of three State Implementation Plan (SIP) submissions, submitted by the Commonwealth of Kentucky, Energy and Environment Cabinet, Department for Environmental Protection, through the Kentucky Division for Air Quality (KDAQ) on April 26, 2013 (two submissions), and February 8, 2016. The submissions address requirements for implementation of the 2012 Fine Particulate Matter (PM<sub>2.5</sub>), 2010 Nitrogen Dioxide (NO<sub>2</sub>), and 2010 Sulfur Dioxide (SO<sub>2</sub>) national ambient air quality standards (NAAQS). When EPA promulgates a new or revised NAAQS, the Clean Air Act (CAA or Act) requires the state to make a new SIP submission establishing that the existing SIP meets the various applicable requirements or revising the SIP to meet those requirements. This type of SIP submission is commonly referred to as an “infrastructure” SIP. EPA is approving the portions of these infrastructure SIP submissions from Kentucky that relate to the minor source program requirements for the 2012 PM<sub>2.5</sub>, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.  
**DATES:** This rule will be effective April 29, 2019.

**ADDRESSES:** EPA has established dockets for this action under Docket Identification Nos. EPA–R04–OAR–2016–0213, EPA–R04–OAR–2014–0767, and EPA–R04–OAR–2014–0426. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. 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 [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.  
**FOR FURTHER INFORMATION CONTACT:** Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached via electronic mail at [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov) or the telephone number (404) 562–9031.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under section 110 of the CAA, states are required to have SIPs that provide for the implementation, maintenance, and enforcement of the NAAQS. States are further required to make a SIP submission meeting the applicable

requirements of sections 110(a)(1) and (2) within three years of EPA promulgating a new or revised NAAQS.<sup>1</sup> EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. This action pertains to one of the requirements of section 110(a)(2): The minor source requirements of section 110(a)(2)(C). The minor source provisions are one of three components of section 110(a)(2)(C). With respect to the minor source requirements, SIPs must include a program to provide for the enforcement of measures for the state-wide regulation of new and modified minor sources and minor modifications of major sources under the New Source Review (NSR) program.

This action pertains to the section 110(a)(2)(C) minor source requirements for Kentucky’s infrastructure SIP submissions for the 2012 PM<sub>2.5</sub>, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS. All other applicable infrastructure requirements for the 2012 PM<sub>2.5</sub>, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS for Kentucky are being or have been addressed in separate rulemakings. On April 26, 2013, and February 8, 2016, KDAQ submitted infrastructure SIP submissions to EPA that addressed the minor source element of section 110(a)(2)(C) for the pollutants relevant to the 2012 PM<sub>2.5</sub>, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS, in addition to other infrastructure SIP requirements.

<sup>1</sup> See EPA’s May 10, 2017, action proposing to approve other portions of Kentucky’s infrastructure SIP submittal for the 2012 PM<sub>2.5</sub> NAAQS for a discussion of EPA’s general approach to reviewing infrastructure SIP submittals. 82 FR 21751.