



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2017-0701; FRL-9981-44-Region 5]

**Air Plan Approval; Wisconsin; Modification of Greenhouse Gas
Language**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing an approval to a revision to the Wisconsin State Implementation Plan (SIP) submitted by the Wisconsin Department of Natural Resources (WDNR) to EPA on November 28, 2017. In this revision, WDNR makes modifications to the language associated with how greenhouse gases are evaluated in the Prevention of Significant Deterioration (PSD) program. These revisions were made to reflect changes required by the United States Supreme Court in its June 23, 2014 decision, *Utility Air Regulatory Group (UARG) v. EPA*, 134 S. Ct. 2427.

DATES: This final rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2017-0701. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available,

i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Rachel Rineheart, Environmental Engineer, at (312) 886-7017 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Rachel Rineheart, Environmental Engineer, Air Permits Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7017, rineheart.rachel@epa.gov.

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

- I. Background
- II. What Action is EPA Taking?
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

I. Background

This final rulemaking addresses the November 28, 2017 WDNR submittal for SIP revision, revising the rules in the Wisconsin SIP to reflect the changes required by *UARG v EPA*, 134 S. Ct. 2427, on how greenhouse gases are evaluated in the PSD program.

On June 23, 2014, in *UARG v EPA*, the Supreme Court ruled that the Clean Air Act (CAA) neither compels nor permits EPA to adopt an interpretation of the CAA requiring a source to obtain a PSD or title V permit based solely on its potential greenhouse gas emissions. The ruling supported EPA's decision to require sources otherwise subject to PSD review to comply with BACT emission standards for greenhouse gases. In other words, with respect to PSD, the ruling upheld PSD permitting requirements for greenhouse gases under Step 1 of the Tailoring rule for "anyway" sources, *i.e.* sources that were subject to PSD review anyway due to their non-greenhouse gas regulated pollutants, and invalidated PSD permitting requirement for Step 2 sources, *i.e.* sources that were considered major solely as a result of their greenhouse gas emissions.

Following the *UARG v. EPA* decision, WDNR is modifying its PSD rules in NR 405.07(9) to establish the conditions under which greenhouse gases at a stationary source shall be subject to the PSD regulations.

On May 25, 2018 (83 FR 24258), EPA published a notice of proposed rulemaking (NPRM) proposing approval of Wisconsin's November 28, 2017 submittal for SIP revision on the basis that we found it consistent with the June 23, 2014, *UARG v EPA* ruling.

The specific details of Wisconsin's November 28, 2017 SIP revision and the rationale for EPA's approval are discussed in the NPRM and will not be restated here. EPA received three comments on the proposed action; none were relevant to the rulemaking.

II. What Action is EPA Taking?

EPA is approving Wisconsin's November 28, 2017 submittal for SIP revision as the modification to the greenhouse gas language in NR 405.07(9) is consistent with the June 23, 2014, *UARG v EPA* ruling.

III. Incorporation by Reference.

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Wisconsin Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the "For Further

Information Contact" section of this preamble for more information).

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 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, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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, the SIP is not approved to apply on any Indian

reservation land or in any other area where 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. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. 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,
Incorporation by reference, Intergovernmental relations,
Reporting and recordkeeping requirements.

Dated: July 17, 2018.

Cathy Stepp,
Regional Administrator, Region 5.

40 CFR part 52 is amended 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.*

2. Section 52.2570 is amended by revising paragraphs (c) (126) introductory text and (c) (126) (i) (D) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(126) On May 4, 2011, June 20, 2012, and September 28, 2012, Wisconsin Department of Natural Resources (WDNR) submitted a request to revise Wisconsin's Prevention of Significant Deterioration (PSD) program to incorporate the "Tailoring Rule" and the Federal deferral for biogenic CO₂ emissions into Wisconsin's SIP. On November 28, 2017, WDNR submitted a modification to the greenhouse gas language to be consistent with the June 23, 2014, *UARG v EPA* ruling.

(i) * * *

(D) Wisconsin Administrative Code, NR 405.07 Review of major stationary sources and major modifications—source applicability and exemptions. NR 405.07(9), as published in the Wisconsin Administrative Register July 2015, No. 715, effective August 1, 2015.

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[FR Doc. 2018-16469 Filed: 7/31/2018 8:45 am; Publication Date: 8/1/2018]