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6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 52 and 70**

**[EPA-R07-OAR-2020-0036; FRL-10008-54-Region 7]**

### **Air Plan Approval; Nebraska; Approval of State Implementation Plan and Operating Permits Program**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve the removal of Nebraska Administrative Code title 129, chapter 8, section 007.06 from Nebraska's State Implementation Plan (SIP) and title V provisions. Nebraska submitted this revision to the EPA on July 19, 2019. Title 129, chapter 8 contains Nebraska's operating permit program and is approved under title V and EPA's regulations. The EPA's approval of this action makes the State rule consistent with Federal regulations and strengthens the SIP and the title V program.

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

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2020-0036. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly

available, i.e., 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 <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** Lachala Kemp, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551-7214; email address kemp.lachala@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," and "our" refer to EPA.

## **Table of Contents**

- I. What is Being Addressed in this Document?
- II. Have the Requirements for Approval of a SIP Revision Been Met?
- III. The EPA's Response to Comments
- IV. What Action is the EPA Taking?
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

### **I. What is Being Addressed in this Document?**

The EPA is taking final action to approve the removal of title 129, chapter 8, section 007.06 from the Nebraska Administrative Code of the previously approved SIP. Section 007.06 stated that permits used under title 129 chapter 8

superseded all other previously issued operating or construction permits. This section, which was previously approved in Nebraska's SIP, is inconsistent with the EPA's interpretation of the title V program. Title V permits include all SIP-approved permit terms, but do not supersede, void, replace or otherwise eliminate their legal existence and enforceability. This removal of this provision confirms that construction permits are not vacated when an operating permit is issued. Removal of this provision is appropriate, consistent with Federal regulations and strengthens both the title V program and the SIP. The EPA is taking final action for approval of this revision.

**II. Have the Requirements for Approval of a SIP Revision Been Met?**

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from February 28, 2019 to April 3, 2019 and received one comment from EPA on March 5, 2019, supporting the revision. In addition, as explained above the revision meets the substantive SIP requirements of the Clean Air Act (CAA), including section 110 and implementing regulations.

### **III. The EPA's Response to Comments**

The public comment period on the EPA's proposed rule opened February 13, 2020, the date of its publication in the *Federal Register* and closed on March 16, 2020 (85 FR 8240, February 13, 2020). During this period, EPA received one comment. The comment was not substantive or adverse and can be found in the docket.

### **IV. What Action is the EPA Taking?**

EPA is taking final action to approve the removal of title 129, chapter 8, section 007.06 from the Nebraska title V program and SIP because it is inconsistent with EPA's interpretation of the title V program.

### **V. Incorporation by Reference**

In this document, 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 Nebraska Regulations described in the amendments to 40 CFR part 52 set forth below. 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 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been

incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 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 in the next update to the SIP compilation.<sup>1</sup>

## **VI. 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, the 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.

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

- 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 the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; 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).

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).

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Reporting and recordkeeping requirements.

*40 CFR Part 70*

Environmental protection, Administrative practice and  
procedure, Air pollution control, Intergovernmental relations,  
Operating permits, Reporting and recordkeeping requirements.

Dated: April 20, 2020.

James Gulliford,  
Regional Administrator,  
Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR parts 52 and 70 as set forth below:

**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-CC Nebraska**

2. In §52.1420, the table in paragraph (c) is amended by revising the entry "129-8" to read as follows:

**§52.1420 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA-Approved Nebraska Regulations**

Nebraska citation	Title	State effective date	EPA approval date	Explanation
STATE OF NEBRASKA				
Department of Environmental Quality				
Title 129—Nebraska Air Quality Regulations				
129-8	Operating Permit Content	6/24/2019	[insert date of publication in the Federal Register], [insert Federal Register citation]	

\* \* \* \* \*

**PART 70-STATE OPERATING PERMIT PROGRAMS**

3. The authority citation for part 70 continues to read as follows:

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

4. Appendix A to part 70 is amended by adding paragraph (q) under "Nebraska; City of Omaha; Lincoln-Lancaster County Health Department" to read as follows:

**Appendix A to Part 70--Approval Status of State and Local  
Operating Permits Programs**

\* \* \* \* \*

*Nebraska; City of Omaha; Lincoln-Lancaster County Health  
Department*

\* \* \* \* \*

(q) The Nebraska Department of Environment and Energy submitted revisions to NDEQ Title 129 Chapter 8 "Operating Permit Content" on July 19, 2019. The State effective date is June 24, 2019. The revision effective date is **[insert date 30 days after date of publication in the Federal Register]**.

\* \* \* \* \*

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