

requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

#### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### *F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to

State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### *G. Submission to Congress and the Comptroller General*

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 rule 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**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

#### *H. Petitions for Judicial Review*

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 November 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Hydrocarbons,

Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 6, 1999.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations 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 F—California**

2. Section 52.220 is amended by adding paragraphs (c)(262)(i)(B)(2) and (c)(264)(i)(A)(2) to read as follows:

#### **§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*  
(262) \* \* \*  
(i) \* \* \*  
(B) \* \* \*

(2) Rule 74.24.1, adopted on November 10, 1998.

\* \* \* \* \*

(264) \* \* \*  
(i) \* \* \*  
(A) \* \* \*

(2) Rule 1106.1, adopted on May 1, 1992, and amended on February 12, 1999.

\* \* \* \* \*

[FR Doc. 99-22183 Filed 8-30-99; 8:45 am]

BILLING CODE 6560-50-P

#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Parts 52 and 60**

[ND-001-0006a; FRL-6426-5]

#### **Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards**

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

**ACTION:** Direct final rule and delegation of authority.

**SUMMARY:** EPA approves revisions to the State Implementation Plan (SIP) submitted by the Governor of North Dakota with a letter dated September 28, 1998. The revisions affect air pollution control rules regarding general

provisions, the State SO<sub>2</sub> ambient air quality standard, emissions of particulate matter and organic compounds, and permits to construct. EPA will handle separately the revisions to the Title V operating permit program, a direct delegation request for emission standards for hazardous air pollutants for source categories, and the State's plan for hospital, medical, and infectious waste incinerators.

Finally, EPA is providing notice that on May 7, 1999, North Dakota was delegated authority to implement and enforce the New Source Performance Standards (NSPS) in 40 CFR part 60, as of November 1, 1997, (excluding subpart Eb).

**DATES:** This direct final rule is effective on November 1, 1999 without further notice, unless EPA receives adverse comment by September 30, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Mail written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado, 80202-2405. Documents relevant to this action can be perused during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado, 80202-2405. Copies of the incorporation by reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of the State documents relevant to this action are available at the North Dakota Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota, 58504-5264.

**FOR FURTHER INFORMATION CONTACT:** Amy Platt, Environmental Protection Agency, Region VIII, (303) 312-6449.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we," "us," or "our" are used we mean EPA.

## I. Background

In response to a petition by the Lignite Energy Council, the North Dakota Legislature adopted Senate Bill No. 2356 in the spring of 1997. This bill created a new section in chapter 23-25 of the North Dakota Century Code which, among other things, prohibits the adoption of ambient air quality rules

or standards for sulfur dioxide that affect coal conversion facilities or petroleum refineries that are more strict than federal rules or standards under the Clean Air Act. As a result, the North Dakota Department of Health revised Chapter 33-15-02, Ambient Air Quality Standards, of the North Dakota Administrative Code (N.D.A.C.), to, among other things, exempt coal conversion facilities and petroleum refineries from the North Dakota ambient air quality standards (AAQS) for sulfur dioxide (SO<sub>2</sub>), which are more stringent than the National Ambient Air Quality Standards (NAAQS) for SO<sub>2</sub>. The revision is considered a relaxation. Because of the change in State law, coal conversion facilities and petroleum refineries will no longer be limited by the North Dakota AAQS and will not be allowed to emit SO<sub>2</sub> up to the NAAQS, unless limited by Prevention of Significant Deterioration (PSD) increment. The September 28, 1998 SIP revision addresses, among other things, this rule revision.

## II. Analysis of State Submission

### A. Procedural Background

The Act requires States to follow certain procedures in developing implementation plans and plan revisions for submission to EPA. Sections 110(a)(2) and 110(1) of the Act provide that each implementation plan a State submits must be adopted after reasonable notice and public hearing.

We also must determine whether a submittal is complete and therefore warrants further review and action (see section 110(k)(1) of the Act and 57 FR 13565). EPA's completeness criteria for SIP submittals can be found in 40 CFR part 51 appendix V. EPA attempts to determine completeness within 60 days of receiving a submission. However, the law considers a submittal complete if we don't determine completeness within six months after we receive it.

To provide for public comment, the North Dakota Department of Health (NDDOH), after providing adequate notice, held a public hearing on May 7, 1998 to address the revisions to the SIP and Air Pollution Control Rules. Following the public hearing, public comment period, and legal review by the North Dakota Attorney General's Office, the North Dakota State Health Council adopted the rule revisions, which became effective on September 1, 1998.

The Governor of North Dakota submitted the SIP revisions to EPA with a letter dated September 28, 1998. We reviewed them to determine completeness under the completeness

criteria in 40 CFR part 51, appendix V. We found the submittal complete and so notified the Governor in a letter dated December 3, 1998. That letter also described the next steps to be taken in our review.

### B. September 28, 1998 Revisions

As noted above, we will handle separately the revisions in the September 28, 1998 submittal regarding Chapter 33-15-14 (section specific to the Title V operating permit program), a direct delegation request for North Dakota Air Pollution Control Rules Chapter 33-15-22, regarding emission standards for hazardous air pollutants for source categories, as well as the State's plan for hospital, medical, and infectious waste incinerators. The submittal also included a direct delegation request for standards of performance for new stationary sources (see below). Finally, the submittal addressed revisions to general provisions, the State SO<sub>2</sub> ambient air quality standard, emissions of particulate matter and organic compounds, and the permit to construct program, which involve the following chapters of the N.D.A.C. to be addressed in this document: 33-15-01 General Provisions; 33-15-02 Ambient Air Quality Standards; 33-15-05 Emissions of Particulate Matter Restricted; 33-15-07 Control of Organic Compound Emissions; and 33-15-14 Designated Air Contaminant Source, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (subsection specific to permit to construct only).

#### 1. Chapter 33-15-01, N.D.A.C., General Provisions

Definitions for "coal conversion facility" and "petroleum refinery" were added to this chapter. This chapter was also revised to update the definition of volatile organic compounds ("VOCs") in 33-15-01-04.51 to match the Federal definition as published by EPA on April 9, 1998 (63 FR 17331). These revisions are consistent with Federal requirements, and therefore, approvable.

#### 2. Chapter 33-15-02, N.D.A.C., Ambient Air Quality Standards

In section 33-15-02-07, Concentrations of Air Contaminants in the Ambient Air Restricted, two new subsections were added. The new subsection 3 allows coal conversion facilities and petroleum refineries to emit sulfur dioxide up to the National Ambient Air Quality Standards (NAAQS). This subsection also reiterates that affected facilities must still comply with the Prevention of

Significant Deterioration (PSD) increments. The new subsection 4 allows facilities that experience a malfunction, or that need to shut down air pollution control equipment for maintenance, to emit sulfur dioxide in quantities that may exceed the 1-hour and 24-hour State Ambient Air Quality Standards (AAQS), but not to exceed the NAAQS. These revisions are a relaxation of requirements for affected sources because the NAAQS are less stringent than the State standards.

In addition, Table 2 was added to this chapter. Table 2 lists the NAAQS for sulfur dioxide.

In a March 28, 1997 letter from Richard Long, EPA, to Dana Mount, North Dakota Department of Health (NDDOH), EPA requested more information from the State regarding the implementation of Senate Bill No. 2356, which had recently been adopted by the State legislature and signed by the Governor. This bill prohibits the NDDOH from adopting sulfur dioxide ambient air quality standards affecting coal conversion facilities or petroleum refineries that are more strict than federal standards. The bill also provides for retroactive application, thus affecting earlier permitting decisions by NDDOH. EPA requested information to support a demonstration that the NAAQS and PSD increments would be protected in light of this change in State standards. In a series of letters from the NDDOH dated April 10 and November 17, 1997, and March 23, June 10, and December 1, 1998, the State provided EPA with adequate technical support information to demonstrate that the NAAQS and PSD increments would be protected.

a. *State's Technical Support Information.* According to NDDOH, Senate Bill No. 2356 allows existing and new coal conversion facilities and petroleum refineries to emit sulfur dioxide in amounts that could raise ambient concentrations up to the NAAQS. The sources would, however, have to comply with all other applicable requirements of the State Implementation Plan (SIP), including PSD increment. Note that the new law only applies to nine existing facilities (seven power plants, one coal gasification plant, and one petroleum refinery). For facilities that indicate a desire to increase their allowable emission rates based on this legislation, the State intends to review associated PSD increment consumption and NAAQS impacts. The State does not believe any increase in emissions from these facilities will endanger the NAAQS because air quality in North Dakota is good based on monitoring

conducted around the State, and ambient SO<sub>2</sub> levels are well below both the State AAQS and the NAAQS.

At EPA's request, the State outlined how it intended to implement the requirements of SB2356 in a November 17, 1997 letter from William Delmore, North Dakota Assistant Attorney General, to Terry Lukas, EPA. The State provided a list of existing sources which are subject to Senate Bill No. 2356, a proposed rule amendment, and SIP revision schedule. The State proposed to revised two chapters of its Air Pollution Control Rules to implement SB2356, namely Chapters 33-15-01, General Provisions, and 33-15-02, Ambient Air Quality Standard. In Chapter 33-15-01, the NDDOH proposed definitions for "coal conversion facility" and "petroleum refinery." In Chapter 33-15-02, the NDDOH proposed to include the substantive requirements of SB2356. The State also declared its intent to enforce compliance with these revisions.

Upon review of Mr. Delmore's November 17, 1997 letter, EPA provided further guidance to the State regarding the necessary demonstration to show that the revisions would ensure protection of the NAAQS and PSD increments in light of the change in applicability of the State AAQS mandated by Senate Bill No. 2356. In a January 8, 1998 letter, EPA indicated that the requirement for making such a demonstration could not be fulfilled at the time of SIP revision because the effect of the relaxation on ambient air quality would depend on future permitting actions. Therefore, the demonstration would have to be built into the revised SIP so that EPA could consider approval of the revision.

EPA provided wording changes to the proposed regulatory language to ensure that emissions would not be permitted in any manner or amount that would cause or contribute to a violation of the NAAQS or PSD increments and to require a demonstration through modeling, with opportunity for EPA review, that a revised emission limit would not cause or contribute to a violation of the NAAQS, PSD increments, or any other requirement under the Federal Clean Air Act.

EPA also instructed the State to provide additional information as technical support documentation which would be necessary for EPA to consider approval of the final SIP revision, as follows:

—General modeling requirements that sources will have to meet if they seek to raise their emissions limits as a result of this change in applicability of the State

AAQS. These general modeling requirements should follow the requirements contained in EPA's Guideline on Air Quality Modeling (40 CFR part 51, appendix W) and should include consideration of cumulative impacts.

—An explanation of how the State intends to determine "that any source \* \* \* causes a verifiable ambient air quality standard violation which is attributable to the source \* \* \* for compliance purposes, as indicated in Mr. Delmore's November 17, 1997 letter.

In a March 23, 1998 letter, the NDDOH provided its draft SIP revision to EPA for review and comment prior to public hearing. This draft SIP revision included, among other things, the proposed regulatory revisions for implementing SB2356.

With an April 29, 1998 comment letter for public hearing, EPA noted that, for the most part, our concerns about the proposed revisions as described in Mr. Delmore's November 17, 1997 letter had been addressed. The State addressed our suggested language changes by incorporating them into Chapter 33-15-02, Ambient Air Quality Standards, and Chapter 33-15-14, Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (subsection related to alterations to a source under the permit to construct section—see II.B.5. below). The State believed it was reasonable to address our concerns through Chapter 33-15-14 (as well as Chapter 33-15-02) because any request for an increase in emissions will have to go through the State's permit process.

EPA also requested additional information related to how to model different source categories subject to different SO<sub>2</sub> standards (State AAQS vs. NAAQS) in the same airshed, *i.e.*, which standard would apply.

In a June 10, 1998 letter from Dana Mount, NDDOH, to Richard Long, EPA, the State responded to our public hearing comments and provided some of the technical support documentation necessary. The State indicated that all modeling would be conducted in accordance with the "Guideline on Air Quality Models" published by EPA. With respect to modeling different source categories subject to different SO<sub>2</sub> standards in the same airshed, the State addressed the following scenarios:

*Existing source subject to State standard and new source subject to the NAAQS*—A new source subject to the NAAQS will be permitted as long as modeling results indicate that the new source plus all existing sources do not cause or contribute to a violation of the NAAQS or PSD increments.

*Existing source subject to the NAAQS and a new source subject to the State standard*—The new source will be permitted as long as it does not cause or contribute to a violation of the State AAQS or PSD increments. If modeling for this source plus all existing sources predicts a violation of the State standard or PSD increments, the new facility will not be permitted if it significantly contributes to these violations. If the new source would not significantly contribute to these violations, then it will be permitted. (However, a SIP revision will be required to address the predicted increment violation. See 40 CFR 51.166(a)(3).)

*Existing source subject to the NAAQS seeking to increase its emission limit in an air shed with existing sources subject to the State standard*—The existing NAAQS source will be allowed to increase its emissions as long as the modeling (which includes all sources) does not predict a violation of the NAAQS or PSD increments.

As the State's final piece of technical support documentation, a December 1, 1998 letter from Dana Mount, NDDOH, to Richard Long, EPA, summarized the State's approach to enforcement of its revised SO<sub>2</sub> standard. In the event that data from the state-wide ambient air quality monitoring network indicates an exceedance of the SO<sub>2</sub> standard, that data will be used along with dispersion modeling to determine what source or sources contributed to the exceedance. Both ambient monitoring and dispersion modeling will be used as the primary tools to determine corrective actions or enforcement activity. Dispersion modeling also will be used in the case of suspected exceedances to determine the necessity of establishing monitoring sites at locations of prime impact.

b. *EPA's Rationale for Approving Change.* EPA believes that we can approve this change in applicability of more stringent State standards because the NAAQS, PSD increments, and other Clean Air Act programs appear to be protected, based on the information provided by the State in the letters discussed above and the State's incorporation of EPA's suggested regulatory language. The protective features of this SIP revision and the State's policy for implementing it are as follows:

i. Demonstration is built into the SIP revision through regulatory language to ensure that the NAAQS, PSD increments, and other Clean Air Act requirements are protected. (See Chapter 33-15-02-07. 3 and 4 and Chapter 33-15-14-02.3c)

ii. Sources that seek to raise their emissions limits as a result of this change in applicability of the State AAQS will have to meet modeling requirements that follow EPA's Guideline on Air Quality Modeling (40 CFR part 51, appendix W) and will have to include consideration of cumulative impacts.

iii. Both ambient monitoring and dispersion modeling will be used to

determine corrective actions or enforcement activity in the event that monitoring data indicates an exceedance of the SO<sub>2</sub> standard. Dispersion modeling also will be used in the case of suspected exceedances to determine the need for new monitoring sites at locations or prime impact.

For a more detailed discussion of EPA's rationale for approving this revision, please refer to the Technical Support Document (TSD) accompanying this action.

### 3. Chapter 33-15-05, N.D.A.C., Emissions of Particulate Matter Restricted

The State deleted its requirements for new infectious waste incinerators since the units will be covered by the requirements in Chapter 33-15-12, Subpart Ec, Standards of performance for hospital/medical/infectious waste incinerators for which construction is commenced after June 20, 1996. This change was made to avoid duplication of Federal rules; however, the State considers it a relaxation of State rules.

The State has been delegated authority to implement and enforce the Federal New Source Performance Standard (NSPS) for hospital/medical/infectious waste incinerators (HMIWI) for which construction is commenced after June 20, 1996 (subpart Ec—see below), and also has received approval of its State Plan to implement the Emission Guidelines for existing HMIWI (see 64 FR 25831, May 13, 1999). Given that the State is implementing that NSPS and State Plan, any change in particulate matter emissions requirements for affected sources in North Dakota is of a de minimus nature. Thus, EPA believes the overall impact of this revision, if any, is minor, and therefore, approvable.

### 4. Chapter 33-15-07, N.D.A.C., Control of Organic Compounds Emissions

This revision is an administrative correction to the "Scope" section to correct the reference to Chapter 1 of the rules. It is minor in nature and approvable.

### 5. Chapter 33-15-14, N.D.A.C., Designated Air Contaminant Sources, Permit To Construct, Minor Source Permit To Operate, Title V Permit To Operate (Revisions Specific to Permit To Construct Section)

Subsection 33-15-14-02.3.c, regarding alterations to a source under the permit to construct section, was added to clarify that any owner or operator of a source who requests an increase in the source's sulfur dioxide emission rate pursuant to Chapter 33-15-02-07.3 (see II.B.2 above) must

demonstrate through a dispersion modeling analysis that the revised allowable emissions will not cause or contribute to a violation of the NAAQS, PSD increments, or any other Federal Clean Air Act requirements. The revision also provides for public and EPA review of such requests.

This language was added at EPA's request to ensure that the NAAQS, PSD increments, or any other Federal Clean Air Act requirements would be protected in light of the change in applicability of the State SO<sub>2</sub> AAQS, as discussed in section II.B.2 above. This revision is approvable.

### C. Delegation of Authority for NSPS

With the September 28, 1998 submittal, North Dakota requested delegation of authority for implementation and enforcement of the NSPS (40 CFR part 60, subpart Ec) for hospital/medical/infectious waste incinerators pursuant to section 111(c) of the Clean Air Act, 42 U.S.C. 7411(c), as amended. On May 7, 1999, delegation was given with the following letter:

Ref: 8P-AR  
Honorable Edward T. Schafer,  
Governor of North Dakota, State Capitol,  
Bismarck, North Dakota 58505-0001.

Re: Delegation of Clean Air Act New Source Performance Standards

Dear Governor Schafer: In a September 28, 1998, letter from you and an October 6, 1998, letter from Francis Schwindt, North Dakota Department of Health, the State of North Dakota requested delegation of authority for revisions to the New Source Performance Standards (NSPS), promulgated in Chapter 33-15-12 of the North Dakota Administrative Code. The State's NSPS regulations incorporate by reference the Federal NSPS in 40 CFR Part 60 as in effect on November 1, 1997, with the exception of subpart Eb, which the State has not adopted. In the above-mentioned letters, the State requests authority for implementation and enforcement of the NSPS through the delegation of authority process pursuant to section 111(c) of the Clean Air Act, 42 U.S.C. § 7411(c), as amended.

Subsequent to States adopting NSPS regulations, EPA delegates the authority for the implementation and enforcement of those standards, so long as the State's regulations are not less stringent than the Federal regulations. EPA has reviewed the pertinent statutes and regulations of the State of North Dakota and has determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State of North Dakota. Therefore, pursuant to Section 111(c) of the Clean Air Act (Act), as amended, and 40 CFR Part 60, EPA hereby delegates its authority for the implementation and enforcement of one NSPS to the State of North Dakota as follows:

(A) Responsibility for all sources located, or to be located, in the State of North Dakota

subject to the standards of performance for new stationary sources promulgated in 40 CFR Part 60 as in effect on November 1, 1997, with the exception of subpart Eb, which the State has not adopted. The additional category of new stationary sources covered by this delegation is hospital/medical/infectious waste incinerators for which construction is commenced after June 20, 1996 (subpart Ec).

(B) Not all authorities of NSPS can be delegated to states under Section 111(c) of the Act, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) approving equivalency determinations and alternative test methods, (2) decision making to ensure national consistency, and (3) EPA rulemaking to implement. Therefore, in delegating to North Dakota the implementation and enforcement authority for Subpart Ec, the following authorities shall be retained by the EPA Administrator and not transferred to the State: (1) the requirements of § 60.56c(i) establishing operating parameters when using controls other than those listed in § 60.56c(d); and (2) alternative methods of demonstrating compliance under § 60.8. For the other NSPS categories previously delegated to the State, our May 28, 1998, delegation letter lists those sections which can't be delegated to the State.

(C) As 40 CFR Part 60 is updated, North Dakota should revise its regulations accordingly and in a timely manner and submit to EPA requests for updates to its delegated authority.

This delegation is based upon and is a continuation of the conditions stated in EPA's original delegation letter of August 30, 1976, to the Honorable Arthur A. Link, then Governor of North Dakota, except that condition 5, relating to Federal facilities, has been voided by the Clean Air Act Amendments of 1977. It is also important to note that EPA retains concurrent enforcement authority, as stated in condition 2. In addition, if at any time there is a conflict between a State and a Federal NSPS regulation, the Federal regulation must be applied if it is more stringent than that of the State, as stated in condition 7. A copy of the August 30, 1976, letter was published in the notices section of the **Federal Register** on October 13, 1976 (41 FR 44884), along with the associated rulemaking notifying the public that certain reports and applications required from operators of new and modified sources shall be submitted to the State of North Dakota (41 FR 44859). Copies of the **Federal Register** notices are enclosed for your convenience.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objection from you within ten days of the date on which you receive this letter, the State of North Dakota will be deemed to have accepted all the terms of this delegation. An information notice will be published in the **Federal Register** in the near future informing the public of this delegation, in which this letter will appear in its entirety.

If you have any questions on this matter, please call me, or have your staff contact

Richard Long, Director of our Air and Radiation Program, at 303-312-6005.

Sincerely yours,

William P. Yellowtail,  
*Regional Administrator.*

Enclosures

cc: Francis Schwindt, ND Department of Health; Dana Mount, ND Department of Health

### III. Final Action

EPA is approving North Dakota's SIP revision, as submitted by the Governor with a letter dated September 28, 1998. The revisions in the September 28, 1998 submittal which are being approved in this document involve the following chapters of the North Dakota Administrative Code: 33-15-01 General Provisions; 33-15-02 Ambient Air Quality Standards; 33-15-05 Emissions of Particulate Matter Restricted; 33-15-07 Control of Organic Compounds Emissions; and 33-15-14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (revisions specific to the Permit to Construct program only).

In addition, the September 28, 1998 submittal included revisions to Chapter 33-15-14, N.D.A.C., Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (section specific to Title V Permit to Operate program), the State's 111(d) plan for existing hospital/medical/infectious waste incinerators, and a request for direct delegation of Chapter 33-15-22, N.D.A.C., Emission Standards for Hazardous Air Pollutants for Source Categories, all of which are being handled separately.

Finally, as requested by the State with its September 28, 1998 submittal, EPA is providing notice that it granted delegation of authority to North Dakota on May 7, 1999, to implement and enforce the NSPS promulgated in 40 CFR part 60, promulgated as of November 1, 1997 (except subpart Eb, which the State has not adopted). However, the State's NSPS authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR part 60.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. The State requested this action. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments should be filed. This rule will be effective November 1,

1999 without further notice unless the Agency receives adverse comments by September 30, 1999. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

### IV. Administrative Requirements

#### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

#### B. Executive Order 12875

Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. This rule has the effect of making existing, state-enforceable requirements federally enforceable. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

#### C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997),

applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it approves a state rule implementing a Federal standard.

#### *D. Executive Order 13084*

Executive Order 13084: Consultation with Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule does not create a mandate on tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

#### *F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal

governments, or to the private sector, result from this action.

#### *G. Submission to Congress and the Comptroller General*

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 Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### *H. Petitions for Judicial Review*

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 November 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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**

##### *40 CFR Part 52*

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

##### *40 CFR Part 60*

Environmental protection, Air pollution control, Aluminum, Ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter,

Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Wool, and Zinc.

Dated: August 5, 1999.

**Jack W. McGraw,**

*Acting Regional Administrator,  
Region VIII.*

Chapter I, title 40 of the Code of Federal Regulations 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 JJ—North Dakota**

2. Section 52.1820 is amended by adding paragraph (c)(31) to read as follows:

##### **§ 52.1820 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(31) The Governor of North Dakota submitted revisions to the North Dakota State Implementation Plan and Air Pollution Control Rules with a letter dated September 28, 1998. The revisions address air pollution control rules regarding general provisions, ambient air quality standards, emissions of particulate matter and organic

compounds, and the permit to construct program.

(i) Incorporation by reference.

(A) Revisions to the Air Pollution Control Rules as follows: General Provisions 33-15-01-04.6-52; Ambient Air Quality Standards 33-15-02-04, 33-15-02-0.3, 33-15-02-07.4, and Table 2; Emissions of Particulate Matter Restricted 33-15-05-03.1; Control of Organic Compound Emissions 33-15-07-01.1; and Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate 33-15-14-02.3.c, effective September 1, 1998.

(ii) Additional material.

(A) An April 10, 1997 letter from Dana Mount, North Dakota Department of Health, to Richard Long, EPA, to provide technical support documentation regarding the impact of SB2356 on sulfur dioxide emission limits for existing and new coal conversion facilities and petroleum refineries.

(B) A November 17, 1997 letter from William Delmore, North Dakota Assistant Attorney General, to Terry Lukas, EPA, to propose how the North Dakota Department of Health will implement the requirements of SB2356.

(c) A June 10, 1998 letter from Dana Mount, North Dakota Department of Health, to Richard Long, EPA, to provide technical support documentation regarding the revisions

to Chapter 33-15-02, Ambient Air Quality Standards, and Chapter 33-15-14, Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (revisions specific to the permit to construct section only).

(D) A December 1, 1998 letter from Dana Mount, North Dakota Department of Health, to Richard Long, EPA, to provide technical support documentation regarding how the State will enforce the revised sulfur dioxide standards in Chapter 33-15-02.

#### **PART 60—[AMENDED]**

1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7411, 7414, 7416, and 7601 as amended by the Clean Air Act Amendments of 1990, Pub. L. 101-549, 104 Stat. 2399 (November 15, 1990; 402, 409, 415 of the Clean Air Act as amended, 104 Stat. 2399, unless otherwise noted).

#### **Subpart A—General Provisions**

2. In section 60.4 the table entitled "Delegation Status of New Source Performance Standards ((NSPS) for Region VIII)" is amended by adding the entry for "Ec—Hospital/Medical/ Infectious Waste Incinerators" in alphabetical order to read as follows:

##### **§ 60.4 Address.**

\* \* \* \* \*

(c) \* \* \*

#### **DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS [(NSPS) for Region VIII]**

Subpart	CO	MT <sup>1</sup>	ND	SD <sup>1</sup>	UT <sup>1</sup>	WY
Ec—Hospital/Medical/Infectious Waste Incinerators .....	.....	.....	(*)			
* .....	* .....	* .....	* .....	* .....		*

\* Indicates approval of State regulation.

<sup>1</sup> Indicates approval of New Source Performance Standards as part of the State Implementation Plan (SIP).

[FR Doc. 99-22177 Filed 8-30-99; 8:45 am]

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#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 300**

[FRL-6430-3]

#### **National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of deletion of the Old Inland Pit Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA), Region 10, announces the deletion of the Old Inland Pit Site from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended.

EPA and the State of Washington Department of Ecology have determined that no further cleanup under CERCLA is appropriate and that the selected remedy has been protective of human health and the environment.

**EFFECTIVE DATE:** August 31, 1999.

**FOR FURTHER INFORMATION CONTACT:** Beverly Gaines, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Mail Stop ECL-110, Seattle, WA 98101, (206) 553-1066.

**SUPPLEMENTARY INFORMATION:** The site to be deleted from the NPL is: Old Inland