

EPA APPROVED GEORGIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
391-3-1-.02(2)(4) .....	Ambient Air Standards .....	01/09/91	12/14/92 57 FR 58989	Paragraph (9) Permit Fees; Paragraph (10) Title V Operating Permits are not federally approved.
391-3-1-.02(2)(5) .....	Open Burning .....	8/16/00	7/10/01 66 FR 35906	
391-3-1-.02(2)(6) .....	Source Monitoring .....	12/28/00	7/11/02 67 FR 45909	
391-3-1-.02(2)(7) .....	Prevention of Significant Deterioration of Air Quality (PSD) .....	06/15/98	12/02/99 64 FR 67491	
391-3-.02(2)(11) .....	Compliance Assurance Monitoring .....	06/15/98	12/02/99 64 FR 67491	
391-3-1-.03 .....	Permits .....	7/8/04	5/09/05 70 FR 24310	
391-3-1-.04 .....	Air Pollution Episodes .....	11/20/75	08/20/76 41 FR 35184	
391-3-1-.05 .....	Regulatory Exceptions .....	11/22/92	02/02/96 61 FR 3819	
391-3-1-.07 .....	Inspections and Investigations .....	11/20/75	08/20/76 41 FR 35184	
391-3-1-.08 .....	Confidentiality of information .....	11/20/75	08/20/76 41 FR 35184	
391-3-1-.09 .....	Enforcement .....	11/22/92	02/02/96 61 FR 3819	
391-3-1-.10 .....	Continuance of Prior Rules .....	11/22/92	02/02/96 61 FR 3819	
391-3-20 .....	Enhanced Inspection and Maintenance ...	12/25/03	4/12/05 70 FR 18991	
391-3-22 .....	Clean Fueled Fleets .....	06/15/98	12/02/99 64 FR 67491	

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R05-OAR-2005-0563, FRL-8037-4]

**Approval and Promulgation of Implementation Plans; Wisconsin; Wisconsin Construction Permit Permanency SIP Revision**

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

**ACTION:** Final Rule.

**SUMMARY:** EPA is taking final action to approve revisions to the Wisconsin State Implementation Plan (SIP) submitted by the State of Wisconsin on December 8, 2005. Wisconsin had submitted for approval into its SIP a statutory revision designed to ensure the permanency of construction permit conditions. EPA proposed approval of this revision on January 12, 2006 (71 FR 1994). EPA is approving this revision because it is consistent with Federal regulations governing State permit programs. This revision also addresses one of the deficiencies identified in

EPA's Notice of Deficiency (NOD), published in the **Federal Register** on March 4, 2004. (69 FR 10167.)

**DATES:** Effective Date: This rule will become effective on March 30, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2005-0563. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (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 electronically through <http://www.regulations.gov> or in hard copy 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 Susan Siepkowski, Environmental Engineer, at (312) 353-2654 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Susan Siepkowski, Environmental Engineer, Air Permit Section, Air

Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-2654, [siepkowski.susan@epa.gov](mailto:siepkowski.susan@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 Information for Today's Action
- II. What Comments Did We Receive?
- III. What Action is EPA Taking Today?
- IV. Statutory and Executive Order Reviews

**I. Background Information for Today's Action**

On March 4, 2004, EPA published a NOD for the Clean Air Act (Act) title V operating permit program in Wisconsin. (69 FR 10167). The NOD was based upon EPA's findings that the State's title V program did not comply with the requirements of the Act or with the implementing regulations at 40 CFR part 70 in several areas. One of the deficiencies identified in the NOD was related to the expiration of Wisconsin's construction permits.

40 CFR 70.1 requires that each title V source has a permit that assures compliance with all applicable requirements, including any term or condition of any preconstruction permit issued pursuant to programs approved

or promulgated under title I, including parts C or D of the Act. Title I of the Act authorizes permitting authorities to establish in permits source specific terms and conditions necessary for sources to comply with the requirements of the Prevention of Significant Deterioration (PSD) and New Source Review (NSR) programs. These permits must remain in effect because they are the legal mechanism through which underlying NSR or PSD requirements become applicable, and remain applicable, to individual sources. (May 20, 1999, EPA Memorandum from John Seitz). If the underlying construction permit expires, then the construction permit terms would no longer be applicable requirements, and the permitting authority would not have the authority to incorporate them into title V permits.

Wisconsin statutes, Wis. Stat. 285.66(1), had provided that construction permits, including NSR and PSD permits, expired after 18 months. Because Wisconsin's construction permits expired, resulting in terms in its title V permits that did not have underlying applicable requirements, EPA identified this as an issue in the NOD.

On December 8, 2005, Wisconsin submitted to EPA for approval, the SIP revision "Request to the EPA to Revise Wisconsin's SIP Pertaining to the Permanency of Construction Permit Conditions." Wisconsin has revised its statutes to make clear that all conditions in construction permits are permanent and remain effective unless changed using title I procedures or a new construction permit is issued. Wisconsin has revised Statute 285.66(1) to provide that, "[n]otwithstanding the fact that authorization to construct, reconstruct, replace, or modify a source expires under this subsection, all conditions in a construction permit are permanent unless the conditions are revised through a revision of the construction permit or through the issuance of a new construction permit." This revision was adopted as part of the Wisconsin 2005–07 biennial budget bill enacted into law as 2005 Wisconsin Act 25. (Published July 26, 2005.)

EPA reviewed Wisconsin's December 8, 2005, SIP revision submittal and determined it was approvable because it ensures that Wisconsin's construction permit program is consistent with Federal program requirements for state permit programs. EPA published its proposed approval of Wisconsin's revision on January 12, 2006 (71 FR 1994). In this action, EPA also solicited public comments for 30 days.

## II. What Comments Did We Receive?

The public comment period on the proposed approval of Wisconsin's SIP revision ended on February 13, 2006. EPA did not receive any comments on this proposed revision.

## III. What Action Is EPA Taking Today?

EPA is approving revisions to the Wisconsin SIP which will make permanent all terms of Wisconsin's permits to construct, reconstruct, replace or modify sources unless the terms are revised through a revision of the construction permit or issuance of a new construction permit.

## IV. Statutory and Executive Order Reviews Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

### *Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

### *Regulatory Flexibility Act*

This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

### *Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

### *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more

Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

### *Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

### *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

### *National Technology Transfer Advancement Act*

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

### *Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### *Congressional Review Act*

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**. 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 1, 2006. 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, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 16, 2006.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ For the reasons stated in the preamble, part 52, chapter I, of 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 YY—Wisconsin

■ 2. Section 52.2587 is added to read as follows:

##### § 52.2587 Wisconsin construction permit permanency revision.

This plan was originally submitted as Wis. Stat. 144.396 by Wisconsin on July 12, 1979 and approved into Wisconsin's SIP on June 25, 1986 (51 FR 23056). Wis. Stat. 144.396 was renumbered Wis. Stat. 285.66 in 1995 Wisconsin Act 227, effective January 1, 1997. On December 8, 2005, Wisconsin submitted for EPA approval into the Wisconsin SIP a

revision to Wis. Stats. 285.66(l), as amended in 2005 Wisconsin Act 25, effective July 26, 2005. This revision makes all conditions in Wisconsin's construction permits permanent. EPA has determined that this statutory revision is approvable under the Act.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2005-IN-0007; FRL-8036-3]

### Approval and Promulgation of Air Quality Implementation Plans; Indiana; Dearborn County Sulfur Dioxide Emission Limits

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

**ACTION:** Final rule.

**SUMMARY:** On November 25, 2005 (70 FR 70999), EPA published a direct final rule approving revisions to Indiana's sulfur dioxide (SO<sub>2</sub>) state implementation plan (SIP) for sources located in Dearborn County. These revisions to the SIP include: revising SO<sub>2</sub> emission limits for existing sources; making minor corrections by removing obsolete rule language; and updating information for sources listed in the rule. On November 25, 2005 (70 FR 71071), EPA also published a proposed rule on this revision. The direct final rule stated that if EPA received an adverse comment, EPA would withdraw the direct final rule and address all public comments received in a subsequent final rule based on the proposed rule. EPA received an adverse comment and removed the direct final rule on January 27, 2006 (71 FR 4490). This rule responds to the comments received and announces EPA's final action.

**DATES:** This final rule is effective on March 30, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2005-IN-0007. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (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 electronically through <http://www.regulations.gov> or in hard copy 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 Charles Hatten, Environmental Engineer, at (312) 886-6031 before visiting the Region 5 office.

#### FOR FURTHER INFORMATION CONTACT:

Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6031, [hatten.charles@epa.gov](mailto:hatten.charles@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever we, us, or your is used, we mean EPA. This supplementary information section is arranged as follows:

- I. General Information
- II. Public Comments Received and EPA Response
- III. What Are the Changes From the Current Rule?
- IV. What Action Is EPA Taking Today?
- V. Statutory and Executive Order Review

#### I. General Information

This action applies to specific SO<sub>2</sub> sources located in Dearborn County, Indiana. The SIP revision amends Title 326 of the Indiana Administrative Code (IAC), section 7-4-13, by revising the SO<sub>2</sub> emission limits for the Indiana Michigan Power Tanners Creek Station. The SIP revision also makes minor corrections and removes obsolete rule language, and updates information for other companies listed in 326 IAC 7-4-13. Indiana held public hearings on these revisions on May 5, 2004 and October 6, 2004.

#### II. Public Comments Received and EPA Response

Three comments on the rulemaking were submitted to EPA, through the electronic public docket and comment system. One commenter expressed support for the rule. A second commenter stated that he didn't "understand what the rule was about," while a third commenter stated that he "disagreed." Because the latter two commenters failed to provide any further information or explain the bases for their comments, EPA is unable to respond beyond directing them to the rationale for approval discussed below.