

March 21, 2008.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2007-0645; FRL-8549-3]

Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Revisions to New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revisions submitted by the State of Wyoming on December 13, 2006. The proposed revisions modify the State's Prevention of Significant Deterioration (PSD) regulations to address changes to the federal NSR regulations promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003. The State of Wyoming has a federally-approved PSD program for new and modified sources impacting attainment areas in the State. Wyoming does not have a Nonattainment New Source Review (NNSR) program. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before May 1, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2007-0645, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

• *E-mail:* videtich.callie@epa.gov and mastrangelo.domenico@epa.gov.

• *Fax:* (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

• *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

• *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m.,

excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

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Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2007-0645. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. 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, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air and Radiation Program, Environmental Protection Agency

(EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129.

EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Domenico Mastrangelo, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-6436, mastrangelo.domenico@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *Wyoming* mean the State of Wyoming unless the context indicates otherwise.

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I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments.
When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

II. What is being addressed in this document?

EPA is proposing to approve the revisions to Chapter 6, Section 4 of the Wyoming Air Quality Standards and Regulations (WAQS&R) submitted by the State on December 13, 2006 that relate to the State PSD construction permit programs. The revisions to the State PSD SIP were adopted by the Wyoming Environmental Quality Council (EQC) on July 27, 2006 and became effective October 6, 2006. Wyoming's PSD program had first been approved by EPA into the State SIP on September 6, 1979 (44 FR 51977).

On December 31, 2002, EPA published revisions to the Federal PSD and non-attainment NSR regulations in 40 Code of Federal Regulations (CFR) Parts 51 and 52 (67 FR 80186). This action was reconsidered with minor changes on November 7, 2003 (68 FR 63021). Collectively, these two final actions are referred to as the “NSR Reform” regulations and became effective nationally in areas not covered by a SIP on March 3, 2003. These regulatory revisions included provisions for baseline emissions determinations, actual-to-future-actual methodology, plantwide applicability limits (PALs), Clean Units, and Pollution Control Projects (PCPs). As stated in the December 31, 2002 rulemaking, State

and local permitting agencies must adopt and submit revisions to their part 51 permitting programs implementing the minimum program elements (67 FR 80240). With the December 13, 2006 submittal, Wyoming requested approval of program revisions into the State SIP that satisfy this requirement.

In the November 7, 2003 reconsideration noted earlier, EPA clarified two provisions in the regulations by including a definition of “replacement unit” and by clarifying that the PALs baseline calculation procedures for newly constructed units do not apply to modified units (68 FR 63021).

On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued a ruling on challenges to the December 2002 NSR Reform revisions, *State of New York et al. v. EPA*, 413 F.3d 3 (D.C. Cir. 2005). Although the Court upheld most of EPA's rules, it vacated both the Clean Unit (CU) and the PCP provisions and remanded back to EPA the recordkeeping provisions at 40 CFR 52.21(r)(6) that required a stationary source to keep records of projects when there was a “reasonable possibility” that the project could result in a significant emissions increase. EPA brought its NSR Reform regulations in conformity with the Court's June 24, 2005 ruling in a final rulemaking published on June 13, 2007 (72 FR 32526). In this action, EPA removed from the Code of Federal Regulations (CFR) the PCP and CU provisions contained in sections 40 CFR 51.165, 51.166, and 52.21.

On October 27, 2003 EPA published a rulemaking action related to, but not part of, the 2002 NSR Reform. EPA published the Routine Equipment Replacement Provision (ERP) amendments (68 FR 61248) which specified at 40 CFR 51.166(b)(2)(iii)(a) the criteria for the routine replacement of equipment. On December 24, 2003 the Court of Appeals for the DC Circuit on challenges to the October 27, 2003 EPA rulemaking stayed EPA's final Routine Equipment Replacement Provision, *State of New York v. EPA, No. 03-1380*. On March 17, 2006, the same Court vacated these provisions.

In its revision to Chapter 6, Section 4 of the Wyoming Air Quality Standards and Regulations, Wyoming did not include the vacated Clean Unit, PCP, and ERP provisions.

III. What is the State process to submit these materials to EPA?

Section 110(k) of the CAA addresses EPA's actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural

requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a state to EPA. The Wyoming Air Quality Division (AQD) held a public hearing on July 18, 2006 to propose revisions consistent with the EPA 2002 NSR Reform to Chapter 6, Permitting Requirements, Section 4, Prevention of Significant Deterioration (PSD). The revised PSD provisions were adopted on July 27, 2006, effective October 6, 2006. The Governor submitted these SIP revisions to EPA on December 13, 2006.

We have evaluated the Governor's submittal of the PSD SIP revisions and have determined that the State met the requirements for reasonable notice and public hearing under Section 110(a)(2) of the CAA.

IV. What are the changes that EPA is approving?

EPA is proposing to approve revisions to the Wyoming SIP that would bring the State PSD program provisions in conformity with the 2002 NSR Reform Rules. Wyoming sought to develop a regulatory program that closely reflects the federal NSR regulations and conforms to the requirements of 40 CFR 51.166. The revised PSD provisions reflect the body of EPA NSR Reform rules promulgated in the December 31, 2002 **Federal Register** (67 FR 80186) and related courts decisions that stayed or vacated portions of EPA's final rulemakings. The following is an examination of only those few areas in which the State of Wyoming altered the Federal regulatory text or approach. A detailed comparison of Chapter 6, Section 4 of the WAQS&R to the Federal requirements at 40 CFR 52.166 can be found in the Technical Support Document prepared for this rulemaking.

The revised Chapter 6, Section 4 of the WAQS&R submitted to EPA on December 13, 2006 does not include the Equipment Replacement Provision (ERP) promulgated by EPA in its October 27, 2003 final rulemaking. The ERP rule was stayed by the United States Court of Appeals for the District of Columbia in a December 24, 2003 decision—*State of New York et al. v. EPA*, 413 F.3d 3 (DC Cir. 2005). The same Court vacated the ERP rules on March 17, 2006. Also, the Wyoming revised NSR SIP does not include Pollution Control Projects and Clean Unit provisions, that were vacated by the United States Court of Appeals for

the District of Columbia on June 24, 2005.¹

As noted earlier, this Court decision also remanded back to EPA the recordkeeping provisions at 40 CFR 52.21(r)(6). The phrase “reasonable possibility” used in the federal rule at 40 CFR 52.21(r)(6) limits the recordkeeping provisions to modifications at facilities that use the actual-to-future-actual methodology to calculate emissions changes and that may have a “reasonable possibility” of a significant emissions increase. The revised PSD rules submitted by the State of Wyoming in December 2006 do include recordkeeping requirements at Chapter 6, Section 4(b)(i)(H)(I): “Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information....” This language lacks the “reasonable possibility” phrase objected to by the Court, and sets requirements that are more stringent than the equivalent EPA provisions in the 2002 NSR Reform rules. It is therefore, approvable.

During the year since the State of Wyoming submitted the recordkeeping requirements provisions of Chapter 6, Section 4(b)(i)(H)(I) being approved in this action, EPA addressed the Court remand on the “reasonable possibility” language omitted in the Wyoming SIP. On March 8, 2007 EPA proposed two alternative options to clarify what constitutes “reasonable possibility” (72 FR 10445). Based on the public comments received, EPA identifies in a December 21, 2007 final rulemaking the criteria triggering the “reasonable possibility” recordkeeping and reporting standard for the 2002 NSR reform rules (72 FR 72607). To make the State NSR SIP provisions consistent with the EPA December 21, 2007 rulemaking and maintain the current recordkeeping provisions of Chapter 6, Section 4(b)(i)(H)(I), Wyoming needs to submit a notice to EPA within 3 years to acknowledge that their regulations fulfill these requirements.

The Wyoming PSD revisions do not address the definition of “replacement unit” approved by EPA in the November 7, 2003 reconsideration of the 2002 NSR Reform. This omission was based on the State understanding that the NSR Reform Rules contained “replacement unit” references only within the PCPs and CU provisions that Wyoming, as noted above, has not adopted. As the State realized that both its revised and its EPA-approved NSR SIPs include a

reference to “replacement unit” in their definition of “Net emission increase” at Chapter 6, Section 4(a)(viii), the State addressed this issue to the satisfaction of EPA. In an exchange of e-mails with EPA on August 13 and September 5, 2007 (included as part of the docket for this action), the State of Wyoming indicated its agreement with EPA’s interpretation of the definition of “replacement unit” detailed in the EPA “Technical Support Document (TSD) for the Prevention of Significant Deterioration (PSD) and Nonattainment Area New Source Review (NSR): Reconsideration.” This TSD was posted in support of EPA’s November 7, 2003 Reconsideration Notice on the public Docket ID No. A-2001-0004. In response to a public comment for that 2003 rulemaking, EPA wrote: “We do not believe that adding a definition of replacement unit is essential for implementing the provisions as finalized in the December 2002 final rules because the preamble in the 1992 WEPCO rules spoke to this issue (see 57 FR 32324); and, we have historically applied this approach for determining whether an emissions unit is a replacement unit. Nevertheless, we do agree with the commenter that it would be convenient to have this definition within the regulatory text to improve the overall clarity of the rule. Accordingly, the **Federal Register** announcing our final decisions on reconsideration also contains amending language to add this definition to the final rules. * * *” (TSD, page 98). Therefore, EPA recommends that the State of Wyoming make its PSD SIP formally consistent with the Federal language by adopting the definition of “replacement unit” in a future rulemaking. However, the omission of this definition from Wyoming’s PSD regulations is approvable since EPA indicated in the 2003 rulemaking that this definition was added to provide clarity.

The requirements included in Wyoming’s PSD program, as specified in Chapter 6, Section 4, are substantively the same as the federal provisions. As part of its review of the Wyoming submittal, EPA performed a line-by-line review of the proposed revisions and has determined that they are consistent with the program requirements for the preparation, adoption and submittal of implementation plans for the Prevention of Significant Deterioration of Air Quality, as set forth at 40 CFR 51.166.

V. What action is EPA taking today?

EPA is proposing to approve the revisions to the Wyoming Air Quality Standards and Regulations, Chapter 6,

Section 4, Prevention of Significant Deterioration submitted to EPA by the State of Wyoming on December 13, 2006.

VI. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 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 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,” as that term is defined in Executive Order 13211, 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed rule 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).

¹ EPA removed these provisions from the 40 CFR 52.165, 52.166 and 52.21 on June 13, 2007 (72 FR 32526).

Executive Order 13132 Federalism

This action 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 proposes to approve 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 proposed 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 proposes to approve a state rule implementing a Federal standard.

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 proposed 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.*).

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.

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

Dated: March 20, 2008.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. E8-6642 Filed 3-31-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[EPA-HQ-OAR-2005-0155; FRL-8547-3]

RIN 2060-AO52

National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the national perchloroethylene air emission standards for dry cleaning facilities promulgated on July 27, 2006 (71 FR 42724), under the authority of section 112 of the Clean Air Act. These amendments to the national perchloroethylene air emission standards for dry cleaning facilities would correct applicability cross references that were not correctly amended between the most recent proposed and final rule revisions, and would clarify that condenser performance monitoring may be done by either of two prescribed methods (pressure or temperature), regardless of whether an installed pressure gauge is present. Without these amendments, new area sources could erroneously be required to perform monitoring that was proposed for only major sources, and installed condenser performance gauge readings could be required of sources when a prescribed temperature method is just as valid for compliance purposes. In the "Rules and Regulations" section of this **Federal Register**, we are issuing these corrections as a direct final rule with this parallel proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received on or before May 16, 2008.

Public Hearing: If anyone contacts EPA requesting to speak at a public hearing concerning this rulemaking by April 11, 2008, we will hold a public hearing on April 16, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2005-0155 by one of the following methods:

(1) <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

(2) *E-mail:* a-and-r-docket@epa.gov and johnson.warren@epa.gov.

(3) *Facsimile:* (202) 566-9744 and (919) 541-3470.

(4) *Mail:* U.S. Postal Service, send comments to: Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

(5) *Hand Delivery:* Deliver in person, or by courier deliveries to: EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing: If you are interested in attending the public hearing, contact Ms. Joan Rogers at (919) 541-4487 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m. at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby. If no one contacts EPA requesting to speak at a public hearing concerning this rule by April 11, 2008 this meeting will be cancelled without further notice.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Johnson, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (E143-03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5124, electronic mail address johnson.warren@epa.gov.

SUPPLEMENTARY INFORMATION: The information presented in this document is organized as follows:

- I. Why is EPA issuing the proposed rule?
- II. Does this action apply to me?
- III. Where can I get a copy of this document?
- IV. Statutory and Executive Order Reviews

I. Why Is EPA Issuing the Proposed Rule?

In the "Rules and Regulations" section of this **Federal Register**, we are issuing these corrections as a direct final rule with this parallel proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule. On September 22, 1993, EPA promulgated National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities (58