

Title V permitting requirements for certain gasoline service stations, bulk gasoline plants, coating sources, printing, publishing and packaging operations, degreasers using volatile organic solvents, and hot mix asphalt plants. This exclusionary rule creates generic potential-to-emit (PTE) limits for specific source categories, and thereby clarifies which of the sources within the specific categories are minor with respect to the Title V operating permit requirements. The rule does not exclude these certain sources from North Dakota's construction or minor source operating permit programs. We are approving this new subsection, 33-15-14-07, under section 110 of the Clean Air Act, which allows us to approve preconstruction permit programs and rules and non-title V operating permit programs and rules.

In the Prevention of Significant Deterioration (PSD) chapter, the definition of "significant" was updated to match the Federal definition. In addition, a provision was removed that required the North Dakota Department of Health (NDDH) to consult with an impacted state prior to approving a PSD source permit application that will consume more than half of the available increment in the other state. These revisions are consistent with Federal requirements and, therefore, are approvable.

II. Response to Comments

We received adverse comments from the Dakota Resource Council, submitted in a letter dated November 6, 2002, regarding our proposed approval of the revisions to the North Dakota PSD rule (NDAC 33-15-15). Specifically, the commenter disagrees with our approval of the repeal of the provision that required NDDH to consult with an impacted state prior to approving a PSD source permit application that will consume more than half of the available increment in the other state. It is the commenter's belief that removal of this provision relaxes the SIP and is in conflict with section 110(a)(2)(D)(i)(II) of the Clean Air Act, which requires SIPs to include provisions prohibiting any source within a state from emitting any air pollutant which will interfere with measures to prevent significant deterioration of air quality in any other state's applicable implementation plan. The commenter believes that we must not approve the removal of this provision without the State demonstrating that there are other provisions in the North Dakota SIP that ensure that sources in North Dakota will not interfere with other states' plans to

prevent significant deterioration of air quality.

We agree with the need for such a demonstration from the State and specifically requested it during our review of these revisions in draft form. In a November 28, 2000, letter from Jeffrey L. Burgess, NDDH, to Dick Long, EPA Region VIII, the State provided such assurances. Specifically, the State indicated that its PSD rules contain all of the notification requirements in the Federal rules (*see* 40 CFR 51.166 and 40 CFR 52.21), including notification during the public comment period to an affected state (*see* North Dakota Administrative Code (NDAC) 33-15-15-01.5.b.). Although there is no longer a consultation requirement, there are still requirements under North Dakota's PSD program for the NDDH to provide notice to any state, Federal Land Manager, or Indian governing body whose lands may be significantly affected by emissions from a proposed source or modification (*see* NDAC 33-15-15-01.5.b(4)). This notification usually takes the form of a copy of the public notice, a copy of the related analyses, and a copy of the draft permit. The affected parties then have the opportunity during the public comment period to provide comments to the NDDH. The deletion of the language regarding consultation with an affected state was made to make the State rules more consistent with Federal requirements (40 CFR 51.166 and 40 CFR 52.21 do not include this requirement).

Since the revisions to this chapter are consistent with Federal requirements, and the State has demonstrated that there are other provisions in the SIP to ensure that sources in North Dakota will not interfere with other states' plans to prevent significant deterioration of air quality, we believe the revisions are approvable.

III. Section 110(l)

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirements of the Act. The North Dakota SIP revisions that are the subject of this document do not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act. The SIP revision amends the State's General Provisions and Methods of Measurement and these changes are consistent with Federal requirements and rules. The repeal of requirements

for existing infectious waste incinerators does not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act because these requirements are addressed in the State's plan for the control of emissions from existing hospital/medical/infectious waste incinerators, which was approved by EPA in a May 13, 1999 **Federal Register** document (64 FR 25831). The new rules that provide for source exclusions from the title V permit to operate requirements are consistent with EPA's authority to approve exclusionary rules under section 110 of the Clean Air Act and the rules do not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act because they are consistent with the April 14, 1998, EPA guidance from John Seitz, Director of the Office of Air Quality Planning and Standards, entitled "Potential to Emit (PTE) Guidance for Specific Source Categories." The update to the State's PSD rules mirror the Federal rules. Finally, the State's removal of the term "nuisance" does not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act since nuisances can still be addressed under the State's definition of "air pollution."

IV. Final Action

EPA is approving North Dakota's SIP revision, as submitted by the Governor with a letter dated June 21, 2001. The revisions in the June 21, 2001 submittal which are being approved in this document involve sections of the following chapters of the North Dakota Administrative Code: 33-15-01 General Provisions; 33-15-05 Emissions of Particulate Matter Restricted; 33-15-14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (specifically, subsection 33-15-14-07, Source Exclusions from Title V Permit to Operate Requirements); 33-15-15 Prevention of Significant Deterioration; and 33-15-17 Restriction of Fugitive Emissions. The June 21, 2001 submittal also included requests for direct delegation of Chapter 33-15-21, Acid Rain Program and Chapter 33-15-22, Emission Standards for Hazardous Air Pollutants for Source Categories, which are being handled separately.

V. Statutory and Executive Order Reviews

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. For