

number to provide advance notice shall be posted on the bridge so that it is plainly visible to vessel operators approaching the up or downstream side of the bridge. The owners of the bridge shall provide and keep in good legible condition two board gauges painted white with black figures to indicate the vertical clearance under the closed draw at all water levels. The gauges shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

Dated: November 23, 2010.

**M.N. Parks,**

*Rear Admiral, U.S. Coast Guard, Commander,  
Ninth Coast Guard District.*

[FR Doc. 2010-32381 Filed 12-23-10; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R07-OAR-2010-0945, FRL-9243-9]

#### Approval and Promulgation of Implementation Plans; Nebraska: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Nebraska State Implementation Plan (SIP), which were recently submitted by the Nebraska Department of Environmental Quality (NDEQ). These revisions include proposed changes to Nebraska's Prevention of Significant Deterioration (PSD) program, submitted by NDEQ to EPA on November 19, 2010; and proposed changes to Nebraska's greenhouse gas (GHG) construction permit related regulations, submitted by NDEQ to EPA on October 19, 2010 (that NDEQ requested parallel processing for on September 30, 2010). The proposed SIP revision (Chapters 1, 2, 5, 14, 15, 17 and 19 of Title 129 of the Nebraska Administrative Code) to Nebraska's Prevention of Significant Deterioration (PSD) program includes Nebraska's adoption of portions of EPA's 2002 new source review (NSR) rule, which we call the NSR Reform Rule, and which we issued by notice dated December 31, 2002, 67 FR 80186. The proposed SIP revision also provides the state of Nebraska with authority to regulate GHG emissions under the PSD program and incorporates the GHG emission

thresholds established in EPA's "PSD and Title V Greenhouse Gas Tailoring Final Rule," which EPA issued by notice dated June 3, 2010, 75 FR 31514. EPA is proposing approval of both submittals and is proposing approval of the GHG portion of the proposed SIP revision through a parallel processing action. In the alternative, EPA is soliciting comments from the public on whether it should initially only approve Nebraska's October 19, 2010 submittal with respect to the revisions to the GHG construction permit regulations, and address Nebraska's November 19, 2010 submittal related to NSR Reform in a subsequent final action.

**DATES:** Comments must be received on or before January 26, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2010-0945, by one of the following methods:

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

2. *E-mail:* [gonzalez.larry@epa.gov](mailto:gonzalez.larry@epa.gov).

3. *Fax:* (913) 551-7844.

4. *Mail:* Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101.

5. *Hand Delivery or Courier:* Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R07-OAR-2010-0945. 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 through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. 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>.

*Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the Nebraska SIP, contact Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Mr. Gonzalez's telephone number is (913) 551-7041; e-mail address: [gonzalez.larry@epa.gov](mailto:gonzalez.larry@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Table of Contents**

- I. What Action is EPA Proposing in Today's Notice?
- II. What is the Background for the Action Proposed by EPA in Today's Notice?
  - A. What are GHGs and their sources?
  - B. What are the general requirements of the PSD program?

- C. What are the CAA requirements to include the PSD program in the SIP?
  - D. What actions has EPA taken concerning PSD requirements for GHG-emitting sources?
  - E. What is the background for EPA's New Source Review (NSR) Reform Rule?
- III. What is EPA's analysis of Nebraska's proposed SIP revision?
- A. What does Nebraska's proposed SIP revision do?
  - B. Why is approval of Nebraska's proposed SIP revision consistent with the Clean Air Act?
- IV. Proposed Action
- V. Statutory and Executive Order Reviews

### **I. What action is EPA proposing in today's notice?**

On October 19, 2010, NDEQ submitted draft revisions to the Nebraska Administrative Code to EPA for approval into the state of Nebraska's SIP to (1) provide the state with the authority to regulate GHGs under its PSD program; and (2) establish appropriate emission thresholds and time-frames for determining which new or modified stationary sources become subject to Nebraska's PSD permitting requirements for GHG emissions. These draft revisions submitted on October 19, 2010 revise existing regulations that NDEQ had amended to adopt portions of EPA's 2002 NSR Reform rules. Because NDEQ had not previously submitted these amendments, on November 19, 2010, NDEQ submitted revisions to the Nebraska Administrative Code to EPA for approval into the state of Nebraska's SIP that adopt portions of the 2002 NSR Reform rules. The combination of the October 19, 2010 submittal and the November 19, 2010 submittal will be referred to as the submissions.

With respect to Nebraska's GHG revisions, the thresholds and time-frames are consistent with the "PSD and Title V Greenhouse Gas Tailoring Final Rule" (75 FR 31514) hereafter referred to as the "Tailoring Rule." Final approval of Nebraska's submissions into the SIP would make Nebraska's SIP adequate with respect to PSD requirements for GHG-emitting sources. Furthermore, final approval of Nebraska's submissions into the SIP would put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements when PSD requirements begin applying to GHGs on January 2, 2011. Finally, final approval of Nebraska's submissions into the SIP would update the SIP to reflect Nebraska's adoption of portions of EPA's 2002 NSR Reform rules. Pursuant

to section 110(k)(3) and 110(l) of the CAA, EPA is proposing to approve this revision into the Nebraska SIP.<sup>1</sup>

Due to the fact that the proposed rule revision relating to GHGs is not yet state-effective, on September 30, 2010, Nebraska requested that EPA "parallel process" this portion of the revisions. Under this procedure, the EPA Regional Office works closely with the state while developing new or revised regulations. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action and prepares a notice of proposed rulemaking. EPA publishes this notice of proposed rulemaking in the **Federal Register** and solicits public comment in approximately the same time frame during which the state is holding its public hearing. The state and EPA thus provide for public comment periods on both the state and the Federal actions in parallel.

After Nebraska submits the formal state-effective rule and SIP revision request (including a response to all public comments raised during the state's public participation process), EPA will prepare a final rulemaking notice for the SIP revision. If changes are made to the state's proposed rule after EPA's notice of proposed rulemaking, such changes must be acknowledged in EPA's final rulemaking action. If the changes are significant, then EPA may be obliged to re-propose the action. In addition, if the changes render the SIP revision not approvable, EPA's re-proposal of the action would be a disapproval of the revision.

### **II. What is the background for the action proposed by EPA in today's notice?**

Today's proposed action on the Nebraska SIP relates to four distinct Federal rulemaking actions. The first rulemaking is EPA's "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule," Final Rule (the Tailoring Rule). 75 FR 31514 (June 3, 2010). The second rulemaking is EPA's "Action to Ensure Authority to

Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call," Final Rule (GHG SIP Call), which was signed by the EPA Administrator on December 1, 2010 (see <http://www.epa.gov/nsr/documents/20101201finalrule.pdf>). The third rulemaking is EPA's "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan," Proposed Rule, 75 FR 53883 (September 2, 2010) (GHG proposed FIP), which serves as a companion rulemaking to EPA's GHG SIP Call, and which EPA has stated it intends to finalize for certain states as soon as December 23, 2010. The fourth rulemaking is EPA's "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects," Final Rule, 67 FR 80186 (December 31, 2002) (NSR Reform), which revised the applicability of the PSD requirements. A summary of each of these rulemakings is described below.

In the first rulemaking, the Tailoring Rule, EPA established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. In the second rulemaking, the GHG SIP Call, EPA issued a finding that the EPA-approved PSD programs in 13 states (including Nebraska) are substantially inadequate to comply with CAA requirements because they do not apply PSD requirements to GHG-emitting sources. For each of these states, EPA required the state (through a "SIP Call") to revise its SIP as necessary to correct such inadequacies. EPA imposed an expedited schedule for these states, in most cases, to submit their corrective SIP revision, in light of the fact that as of January 2, 2011, certain GHG-emitting sources will become subject to the PSD requirements and, without an approved SIP or Federal Implementation Plan (FIP) in place in the state—which would authorize the State or EPA to act as the permitting authority—may not be able to obtain a PSD permit in order to construct or modify. In the third rulemaking, the proposed GHG FIP, EPA is proposing a FIP to apply in any state that is unable to submit, by its deadline, a corrective SIP revision. In the fourth rulemaking, NSR Reform, EPA promulgated certain revisions to the

<sup>1</sup> In today's proposal, EPA is also soliciting public comment on whether it should initially only approve the revisions related to GHGs into the Nebraska SIP in this rulemaking, and address the revisions related to NSR Reform in a subsequent final action. Under this alternative, Nebraska SIP-approved rules that are applicable to the State's authority to regulate GHG would stem from the provisions of EPA's Federal PSD rules as of July 1, 1997, in conjunction with Nebraska's revised regulations which change the definition of "NSR regulated pollutant" to provide NDEQ with the authority to regulate GHGs.

PSD program to, among other things, provide administrative flexibility while retaining or enhancing environmental benefits of the permitting program.

Nebraska has submitted a proposed SIP revision to make the SIP adequate with respect to federal PSD requirements for GHG-emitting sources. This SIP revision puts in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, thereby ensuring that smaller GHG sources emitting less than these thresholds will not be subject to applicable GHG permitting requirements as of January 2, 2011. The proposed SIP revision also makes other changes to the PSD program consistent with NSR Reform.

Below is a brief overview of GHGs and GHG-emitting sources, the CAA PSD program, minimum SIP elements for a PSD program, and EPA's recent actions regarding GHG permitting. Following this section, EPA discusses, in sections III and IV, the relationship between the proposed Nebraska SIP revision and EPA's other national rulemakings as well as EPA's analysis of Nebraska's SIP revision.

#### A. What are GHGs and their sources?

A detailed explanation of GHGs, climate change and the impact on health, society, and the environment is included in EPA's technical support document for EPA's GHG endangerment finding final rule (Document ID No. EPA-HQ-OAR-2009-0472-11292 at <http://www.regulations.gov>). The endangerment finding rulemaking is discussed later in this rulemaking. A summary of the nature and sources of GHGs is provided below.

GHGs trap the Earth's heat that would otherwise escape from the atmosphere into space and form the greenhouse effect that helps keep the Earth warm enough for life. GHGs are naturally present in the atmosphere and are also emitted by human activities. Human activities are intensifying the naturally occurring greenhouse effect by increasing the amount of GHGs in the atmosphere, which is changing the climate in a way that endangers human health, society, and the natural environment.

Some GHGs, such as carbon dioxide (CO<sub>2</sub>), are emitted to the atmosphere through natural processes as well as human activities. Other gases, such as fluorinated gases, are created and emitted solely through human activities. The well-mixed GHGs of concern directly emitted by human activities include CO<sub>2</sub>, methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and

sulfur hexafluoride (SF<sub>6</sub>), hereafter referred to collectively as "the six well-mixed GHGs," or, simply, GHGs. Together these six well-mixed GHGs constitute the "air pollutant" upon which the GHG thresholds in EPA's Tailoring Rule are based. These six gases remain in the atmosphere for decades to centuries where they become well-mixed globally in the atmosphere. When they are emitted more quickly than natural processes can remove them from the atmosphere, their concentrations increase, thus increasing the greenhouse effect.

In the U.S., the combustion of fossil fuels (e.g., coal, oil, gas) is the largest source of CO<sub>2</sub> emissions and accounts for 80 percent of the total GHG emissions by mass. Anthropogenic CO<sub>2</sub> emissions released from a variety of sources, including through the use of fossil fuel combustion and cement production from geologically stored carbon (e.g., coal, oil, and natural gas) that is hundreds of millions of years old, as well as anthropogenic CO<sub>2</sub> emissions from land-use changes such as deforestation, perturb the atmospheric concentration of CO<sub>2</sub>, and the distribution of carbon within different reservoirs readjusts. More than half of the energy-related emissions come from large stationary sources such as power plants, while about a third come from transportation. Of the six well-mixed GHGs, four (CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, and HFCs) are emitted by motor vehicles. In the U.S., industrial processes (such as the production of cement, steel, and aluminum), agriculture, forestry, other land use, and waste management are also important sources of GHGs.

Different GHGs have different heat-trapping capacities. The concept of Global Warming Potential (GWP) was developed to compare the heat-trapping capacity and atmospheric lifetime of one GHG to another. The definition of a GWP for a particular GHG is the ratio of heat trapped by one unit mass of the GHG to that of one unit mass of CO<sub>2</sub> over a specified time period. When quantities of the different GHGs are multiplied by their GWPs, the different GHGs can be summed and compared on a carbon dioxide equivalent (CO<sub>2</sub>e) basis. For example, CH<sub>4</sub> has a GWP of 21, meaning each ton of CH<sub>4</sub> emissions would have 21 times as much impact on global warming over a 100-year time horizon as 1 ton of CO<sub>2</sub> emissions. Thus, on the basis of heat-trapping capability, 1 ton of CH<sub>4</sub> would equal 21 tons of CO<sub>2</sub>e. The GWPs of the non-CO<sub>2</sub> GHGs range from 21 (for CH<sub>4</sub>) up to 23,900 (for SF<sub>6</sub>). Aggregating all GHGs on a CO<sub>2</sub>e basis at the source level allows a facility to evaluate its total GHG emissions

contribution to global warming based on a single metric.

#### B. What are the general requirements of the PSD program?

##### 1. Overview of the PSD Program

The PSD program is a preconstruction review and permitting program applicable to new major stationary sources and major modifications at existing stationary sources. The PSD program applies in areas that are designated "attainment" or "unclassifiable" for a national ambient air quality standard (NAAQS). The PSD program is contained in part C of title I of the CAA. The "nonattainment NSR" program applies in areas not in attainment of a NAAQS or in the Ozone Transport Region, and it is implemented under the requirements of part D of title I of the CAA. Collectively, EPA commonly refers to these two programs as the major NSR program. The governing EPA rules are generally contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, Appendices S and W. There is no NAAQS for CO<sub>2</sub> or any of the other well-mixed GHGs, nor has EPA proposed any such NAAQS; therefore, unless and until EPA takes further such action, the nonattainment NSR program does not apply to GHGs.

The applicability of PSD to a particular source must be determined in advance of construction or modification and is pollutant-specific. The primary criterion in determining PSD applicability for a proposed new or modified source is whether the source is a "major emitting facility," based on its estimated potential emissions of regulated pollutants within the meaning of CAA section 169(1), that either constructs or undertakes a modification. EPA has implemented these requirements in its regulations, which use somewhat different terminology than the CAA does, for determining PSD applicability.

##### a. Major Stationary Source

Under EPA's regulations, PSD applies to a "major stationary source," which is defined as any source belonging to a specified list of 28 source categories that emits or has the potential to emit 100 tpy or more of any air pollutant or any other source type that emits or has the potential to emit any air pollutant in amounts equal to or greater than 250 tpy. 40 CFR 51.166(a)(7)(i), 51.166(b)(1)(i). We refer to these levels as the 100/250-tpy thresholds. A new source with a potential to emit (PTE) at or above the applicable "major stationary source threshold" is subject to major NSR. These limits originate from

section 165(a)(1) of the CAA, which applies PSD to any “major emitting facility”; and CAA section 169(l), which defines the term to include any source that emits or has a PTE of 100 or 250 tpy, depending on the source category. EPA’s regulations have revised the terminology, by applying PSD to any “major stationary source,” and have interpreted PSD applicability more narrowly by defining that term to include a source that emits at least one “regulated NSR pollutant,” 40 CFR 51.166(b)(1)(i)(a). The regulations define that term, in turn, to include pollutants regulated under specified provisions of the CAA; and to, as a catch-all category, “[a]ny pollutant that otherwise is subject to regulation under the [CAA].” *Id.* at 51.166(b)(49)(iv). This catch-all category will include GHGs on January 2, 2011, under our interpretation of the term “subject to regulation under the [CAA],” as discussed in EPA’s recently issued memorandum entitled, “Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.” 75 FR 17004 (April 2, 2010).

#### b. Major Modifications

Under EPA regulations, PSD also applies to existing sources that undertake a “major modification,” which occurs when: (1) There is a physical change in, or change in the method of operation of, a “major stationary source”; (2) the change results in a “significant” emissions increase of a pollutant subject to regulation (equal to or above the significance level that EPA has set for the pollutant in 40 CFR 51.166(b)(23)(i)); and (3) there is a “significant net emissions increase” of a pollutant subject to regulation that is equal to or above the significance level 40 CFR 51.166(b)(23)(i). Significance levels, which EPA has promulgated for criteria pollutants and certain other pollutants, represent a *de minimis* contribution to air quality problems. When EPA has not set a significance level for a regulated NSR pollutant, PSD applies to an increase of the pollutant in any amount (that is, in effect, the significance level is treated as zero).

#### 2. General Requirements for PSD

This section provides a very brief summary of the main requirements of the PSD program. One principal requirement is that a new major source or major modification must apply best available control technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost effectiveness of the control and energy and environmental impacts. EPA has developed a “top-

down” approach for BACT review, which involves a decision process that includes identification of all available control technologies, elimination of technically infeasible options, ranking of remaining options by control and cost effectiveness, and then selection of BACT. Under PSD, once a source is determined to be major for any regulated NSR pollutant, a BACT review is performed for each pollutant that exceeds its PSD significance level as part of new construction or for modification projects at the source, where there is a significant increase and a significant net emissions increase of such pollutant.<sup>2</sup>

In addition to performing BACT, the source must analyze impacts on ambient air quality to assure that sources do not cause or contribute to violation of any NAAQS or PSD increments and must analyze impacts on soil, vegetation, and visibility. In addition, sources or modifications that would impact Class I areas (e.g., national parks) may be subject to additional requirements to protect air quality related values (AQRVs) that have been identified for such areas. Under PSD, if a source’s proposed project may impact a Class I area, the Federal Land Manager is notified and is responsible for evaluating a source’s projected impact on the AQRVs and recommending either approval or disapproval of the source’s permit application based on anticipated impacts. There are currently no NAAQS or PSD increments established for GHGs, and therefore these PSD requirements would not apply for GHGs, even when PSD is triggered for GHGs. However, if PSD is triggered for a GHG-emitting source, all regulated NSR pollutants that the new source emits in significant amounts would be subject to PSD requirements. Therefore, if a facility triggers PSD for non-GHG pollutants for which there are established NAAQS or increments, the air quality, additional impacts, and Class I requirements would apply to those pollutants.

Pursuant to existing PSD requirements, the permitting authority must provide notice of its preliminary decision on a source’s application for a PSD permit and must provide an opportunity for comment by the public, industry, and other interested persons. After considering and responding to

comments, the permitting authority must issue a final determination on the construction permit. Usually PSD permits are issued by a state or local air pollution control agency that has its own authority to issue PSD permits under a permit program that has been approved by EPA for inclusion in its SIP. In some areas, EPA has delegated its authority to issue PSD permits under federal regulations to the state or local agency. In other areas, EPA issues the permits under its own authority.

#### C. What are the CAA requirements to include the PSD program in the SIP?

The CAA contemplates that the PSD program be implemented in the first instance by the states and requires that states include PSD requirements in their SIPs. CAA section 110(a)(2)(C) requires that—

Each implementation plan \* \* \* shall \* \* \* include a program to provide for \* \* \* regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in part C \* \* \* of this subchapter.

CAA section 110(a)(2)(f) requires that—

Each implementation plan \* \* \* shall \* \* \* meet the applicable requirements of \* \* \* part C of this subchapter (relating to significant deterioration of air quality and visibility protection).

CAA section 161 provides that—

Each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part [C], to prevent significant deterioration of air quality for such region \* \* \* designated \* \* \* as attainment or unclassifiable.

These provisions, read in conjunction with the PSD applicability provisions—which, as noted above, apply, by their terms, to “any air pollutant,” and which EPA has, through regulation, interpreted more narrowly as any “NSR regulated pollutant”—and read in conjunction with other provisions, such as the BACT provision under CAA section 165(a)(4), mandate that SIPs include PSD programs that are applicable to, among other things, any air pollutant that is subject to regulation, including, as discussed below, GHGs on and after January 2, 2011.<sup>3</sup>

<sup>2</sup> EPA notes that the PSD program has historically operated in this fashion for all pollutants—when new sources or modifications are “major,” PSD applies to all pollutants that are emitted in significant quantities from the source or project. This rule does not alter that for sources or modifications that are major due to their GHG emissions.

<sup>3</sup> In the Tailoring Rule, EPA noted that commenters argued, with some variations, that the PSD provisions applied only to NAAQS pollutants, and not GHG; and EPA responded that the PSD provisions apply to all pollutants subject to regulation, including GHG. See 75 FR31560–62 (June 3, 2010). EPA maintains its position that the

A number of states do not have PSD programs approved into their SIPs. In those states, EPA's regulations at 40 CFR 52.21 govern, and either EPA or the state acting as EPA's delegatee serves as the permitting authority. On the other hand, most states have PSD programs that have been approved into their SIPs, and these states implement their PSD programs and act as the permitting authority. Nebraska has a SIP-approved PSD program.

*D. What actions has EPA taken concerning PSD requirements for GHG-emitting sources?*

1. What are the Endangerment Finding, the Light Duty Vehicle Rule, and the Johnson Memo Reconsideration?

By notice dated December 15, 2009, pursuant to CAA section 202(a), EPA issued, in a single final action, two findings regarding GHGs that are commonly referred to as the "Endangerment Finding" and the "Cause or Contribute Finding." "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act," 74 FR 66496. In the Endangerment Finding, the Administrator found that six long-lived and directly emitted GHGs—CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFCs, PFCs, and SF<sub>6</sub>—may reasonably be anticipated to endanger public health and welfare. In the Cause or Contribute Finding, the Administrator "define[d] the air pollutant as the aggregate group of the same six \* \* \* greenhouse gases," 74 FR 66536, and found that the combined emissions of this air pollutant from new motor vehicles and new motor vehicle engines contribute to the GHG air pollution that endangers public health and welfare.

By notice dated May 7, 2010, EPA and the National Highway Traffic Safety Administration published what is commonly referred to as the "Light-Duty Vehicle Rule" (LDVR), which for the first time established Federal controls on GHGs emitted from light-duty vehicles. "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324. In its applicability provisions, the LDVR specifies that it "contains standards and other regulations applicable to the emissions of six greenhouse gases," including CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFCs, PFCs, and SF<sub>6</sub>. 75 FR 25686 (40 CFR 86.1818–12(a)).

PSD provisions apply to all pollutants subject to regulations, and the Agency incorporates by reference the discussion of this issue in the Tailoring Rule.

Shortly before finalizing the LDVR, by notice dated April 2, 2010, EPA published an interpretation that we call the Johnson Memo Reconsideration. "Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs", 75 FR 17004. In this action, EPA stated that it would continue to apply its interpretation that a pollutant is "subject to regulation" only if it is subject to either a provision in the CAA or regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant. EPA added that a pollutant becomes subject to regulation at the time the first regulatory requirement to control emissions of that pollutant "takes effect" (rather than upon promulgation or the legal effective date of the regulation containing such a requirement). In addition, based on the anticipated promulgation of the LDVR, EPA stated that the GHG requirements of the vehicle rule would take effect on January 2, 2011, because that is the earliest date that a 2012 model year vehicle (the first model year in which the rule's GHG requirements apply) may be introduced into commerce.

2. What is EPA's tailoring rule?

By notice dated June 3, 2010, EPA published what we call the Tailoring Rule, which was a final rulemaking for the purpose of relieving overwhelming permitting burdens that would, in the absence of the rule, fall on permitting authorities and sources. 75 FR 31514. EPA accomplished this by tailoring the applicability criteria that determine which GHG emission sources become subject to the PSD program<sup>4</sup> of the CAA. In particular, EPA established in the Tailoring Rule a phase-in approach for PSD applicability and established the first two steps of the phase-in for the largest GHG-emitters. Additionally, EPA committed to certain follow-up actions regarding future steps beyond the first two, discussed in more detail later.<sup>5</sup>

<sup>4</sup> The Tailoring Rule also applies to the title V program, which requires operating permits for existing sources. However, today's action does not affect Nebraska's title V program. We plan to take action on Nebraska's title V program in the future.

<sup>5</sup> EPA adopted the Tailoring Rule after careful consideration of numerous public comments. On October 27, 2009 (74 FR 55292), EPA proposed the Tailoring Rule. EPA held two public hearings on the proposed rule, and received over 400,000 written public comments. The public comment period ended on December 28, 2009. The comments provided detailed information that helped EPA understand better the issues and potential impacts of the Tailoring Rule. The preamble of EPA's Tailoring Rule describes in detail the comments received and how some of these comments were incorporated in EPA's final rule. See 75 FR 31514 for more detail.

For the first step of the Tailoring Rule, which will begin on January 2, 2011, PSD requirements will apply to major stationary source GHG emissions only if the sources are subject to PSD anyway due to their emissions of non-GHG pollutants. Therefore, in the first step, EPA will not require sources that newly construct or modify to apply PSD requirements solely on account of their GHG emissions. Specifically, for PSD, Step 1 requires that as of January 2, 2011, the applicable requirements of PSD, most notably, the BACT requirement, will apply to projects that increase net GHG emissions by at least 75,000 tpy CO<sub>2</sub>e, but only if the project also significantly increases emissions of at least one non-GHG pollutant and thereby trigger PSD anyway.

The second step of the Tailoring Rule, beginning on July 1, 2011, will phase in additional large sources of GHG emissions. New sources that emit, or have the potential to emit, at least 100,000 tpy CO<sub>2</sub>e will become subject to the PSD requirements. In addition, existing sources that emit or have the potential to emit at least 100,000 tpy CO<sub>2</sub>e and that undertake a modification that increases net GHG emissions by at least 75,000 tpy CO<sub>2</sub>e will also be subject to PSD requirements. For both steps, EPA notes that if sources or modifications exceed these CO<sub>2</sub>e-adjusted GHG triggers, they are not covered by permitting requirements unless their GHG emissions also exceed the corresponding mass-based triggers in tpy.

EPA believes that the costs to the sources and the administrative burdens to the permitting authorities of PSD permitting will be manageable at the levels in these initial two steps and that it would be administratively infeasible to subject additional sources to PSD requirements at those times. However, EPA also intends to issue a supplemental notice of proposed rulemaking in 2011, in which the Agency will propose or solicit comment on a third step of the phase-in that would include more sources, beginning on July 1, 2013. In the Tailoring Rule, EPA established an enforceable commitment that the Agency will complete this rulemaking by July 1, 2012, which will allow for 1 year's notice before Step 3 would take effect.

In addition, EPA committed to explore streamlining techniques that may well make the permitting programs much more efficient to administer for GHGs, and that therefore may allow their expansion to smaller sources. EPA expects that the initial streamlining techniques will take several years to develop and implement.

In the Tailoring Rule, EPA also included a provision, that no source with emissions below 50,000 tpy CO<sub>2</sub>e, and no modification resulting in net GHG increases of less than 50,000 tpy CO<sub>2</sub>e, will be subject to PSD permitting before at least 6 years (*i.e.*, April 30, 2016). This is because EPA has concluded that at the present time the administrative burdens that would accompany permitting sources below this level would be so great that even with the streamlining actions that EPA may be able to develop and implement in the next several years, and even with the increases in permitting resources that EPA can reasonably expect the permitting authorities to acquire, it would be impossible to administer the permit programs for these sources until at least 2016.

As EPA explained in the Tailoring Rule, the threshold limitations are necessary because without them, PSD would apply to all stationary sources that emit or have the potential to emit more than 100 or 250 tons of GHG per year beginning on January 2, 2011. This is the date when EPA's recently promulgated LDVR takes effect, imposing control requirements for the first time on CO<sub>2</sub> and other GHGs. If this January 2, 2011, date were to pass without the Tailoring Rule being in effect, PSD requirements would apply to GHG emissions at the 100/250 tpy applicability levels provided under a literal reading of the CAA as of that date. From that point forward, a source owner proposing to construct any new major source that emits at or higher than the applicability levels (and which therefore may be referred to as a "major source) or modify any existing major source in a way that would increase GHG emissions would need to obtain a permit under the PSD program that addresses these emissions before construction or modification could begin.

Under these circumstances, many small sources would be burdened by the costs of the individualized PSD control technology requirements and permit applications that the PSD provisions, absent streamlining, require. Additionally, state and local permitting authorities would be burdened by the extraordinary number of these permit applications, which are orders of magnitude greater than the current inventory of permits and would vastly exceed the current administrative resources of the permitting authorities. Permit gridlock would result since the permitting authorities would likely be able to issue only a tiny fraction of the permits requested.

In the Tailoring Rule, EPA adopted regulatory language codifying the phase-in approach. As explained in that rulemaking, many state, local and tribal area programs will likely be able to immediately implement the approach without rule or statutory changes by, for example, interpreting the term "subject to regulation" that is part of the applicability provisions for PSD permitting. EPA has requested permitting authorities to confirm that they will follow this implementation approach for their programs, and if they cannot, then EPA has requested that they notify the Agency so that we can take appropriate follow-up action to narrow federal approval of their programs before GHGs become subject to PSD permitting on January 2, 2011.<sup>6</sup> On September 30, 2010, the state of Nebraska provided a letter to EPA with the requested modification. See the docket for this proposed rulemaking for a copy of Nebraska's letter.

The thresholds that EPA established are based on CO<sub>2</sub>e for the aggregate sum of six GHGs that constitute the pollutant that will be subject to regulation, which we refer to as GHG.<sup>7</sup> These gases are: CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFCs, PFCs, and SF<sub>6</sub>. Thus, in EPA's Tailoring Rule, EPA provided that PSD applicability is based on the quantity that results when the mass emissions of each of these gases is multiplied by the GWP of that gas, and then summed for all six gases. However, EPA further provided that in order for a source's GHG emissions to trigger PSD requirements, the quantity of the GHG emissions must equal or exceed both the applicability thresholds established in the Tailoring Rule on a CO<sub>2</sub>e basis and the statutory thresholds of 100 or 250 tpy on a mass basis.<sup>8</sup> Similarly, in order for a source to be subject to the PSD modification requirements, the source's

<sup>6</sup> Narrowing EPA's approval will ensure that for federal purposes, sources with GHG emissions that are less than the Tailoring Rule's emission thresholds will not be obligated under federal law to obtain PSD permits during the gap between when GHG PSD requirements go into effect on January 2, 2011 and when either (1) EPA approves a SIP revision adopting EPA's tailoring approach, or (2) if a state opts to regulate smaller GHG-emitting sources, the state demonstrates to EPA that it has adequate resources to handle permitting for such sources. EPA expects to finalize the narrowing action prior to the January 2, 2011 deadline with respect to those states for which EPA will not have approved the Tailoring Rule thresholds in their SIPs by that time.

<sup>7</sup> The term "greenhouse gases" is commonly used to refer generally to gases that have heat-trapping properties. However, in this notice, unless noted otherwise, we use it to refer specifically to the pollutant regulated in the LDVR.

<sup>8</sup> The relevant thresholds are 100 tpy for title V, and 250 tpy for PSD, except for 28 categories listed in EPA regulations for which the PSD threshold is 100 tpy.

net GHG emissions increase must exceed the applicable significance level on a CO<sub>2</sub>e basis and must also result in a net mass increase of the constituent gases combined.

### 3. What is the GHG SIP Call and the proposed GHG FIP?

On December 1, 2010, the EPA Administrator signed the final GHG SIP Call. In that action—along with the companion GHG FIP, which EPA proposed by notice dated September 2, 2010 and expects to finalize for some states on December 23, 2010—EPA took steps to ensure that in the 13 states that do not have authority to issue PSD permits to GHG-emitting sources at present, either the state or EPA will have the authority to issue such permits by January 2, 2011 or soon thereafter. EPA explained that although for most states, either the state or EPA is already authorized to issue PSD permits for GHG-emitting sources as of that date, these 13 states have EPA-approved PSD programs that do not include GHG-emitting sources and therefore do not authorize these states to issue PSD permits to such sources. Therefore, EPA issued a finding that these 13 states' SIPs are substantially inadequate to comply with CAA requirements. Accordingly, and as part of the same action, EPA also issued a SIP Call to require a SIP revision that applies their SIP PSD programs to GHG-emitting sources. EPA also established a SIP submittal deadline. In the proposed SIP call, EPA had stated that the deadline could range from as little as three weeks after the final SIP call was signed to as long as 12 months after the final SIP call was signed, and that each affected state was authorized to indicate to EPA that it did not object to a deadline on the earlier end of that range. In the final SIP call, EPA established deadlines that ranged, for the various states, from December 23, 2010 (three weeks after signature) to December 1, 2011 (12 months after signature), based, in general, on each state's preference. In the companion GHG FIP rulemaking, EPA proposed a FIP that would give EPA authority to apply EPA's PSD program to GHG-emitting sources in any state that is unable to submit a corrective SIP revision by its deadline.

Nebraska was one of the states for which EPA proposed and finalized the SIP Call. The state's comments regarding the proposed SIP call, submitted September 30, 2010, are included in the docket for this rulemaking. In the SIP call, EPA established a SIP submittal deadline for Nebraska of March 1, 2011, in accordance with Nebraska's statement

in that letter that “Nebraska does not object to EPA’s establishment of a deadline of March 1, 2011 for submittal of Nebraska’s corrective SIP, although we are expeditiously working for an earlier submittal.”

In addition, in the SIP call rulemaking, EPA stated certain requirements that the corrective SIP revision must meet, which are that the corrective SIP revision must—

- (i) apply the SIP PSD program to GHG-emitting sources;
- (ii) define GHGs as the same pollutant to which the Light-Duty Vehicle Rule<sup>9</sup> (LDVR) applies, that is, a single pollutant that is the aggregate of the group of six gases (carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>)); and
- (iii) either limit PSD applicability to GHG-emitting sources by adopting the applicability thresholds included in the Tailoring Rule or adopt lower thresholds and show that the state has adequate personnel and funding to administer and implement those lower thresholds.

GHG SIP Call, at 12–13. In addition, if the corrective SIP revision adopts the Tailoring Rule thresholds, then it must either adopt the CO<sub>2</sub>e metric and use short tons (as opposed to metric tons) for calculating GHG emissions in order to implement those thresholds, or assure that its approach is at least as stringent as under the Tailoring Rule, so that the state does not exclude more sources than under the Tailoring Rule. See *id.* at 96.

#### *E. What is the background for EPA’s New Source Review (NSR) Reform rule?*

The 2002 NSR Reform rules made changes to five areas of the NSR programs (concerning both PSD and nonattainment NSR). In summary, the 2002 rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with plantwide applicability limits (PALs) to avoid having a significant emission increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs) from the

definition of physical change or change in the method of operation.

After the 2002 NSR Reform rules were finalized and effective, various petitioners challenged numerous aspects of the 2002 NSR Reform rules, along with portions of EPA’s 1980 NSR rules (45 FR 5276 August 7, 1980). On June 24, 2005, the Court of Appeals for the District of Columbia issued a decision on the challenges to the 2002 NSR Reform Rules. *New York v. United States*, 413 F.3d 3 (DC Cir. 2005). In summary, the Court vacated portions of the rules pertaining to clean units and pollution control projects, remanded a portion of the rules regarding exemption from recordkeeping, *e.g.*, 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and let stand the other provisions included as part of the 2002 NSR Reform rules.

### **III. What is EPA’s analysis of Nebraska’s proposed SIP revision?**

#### *A. What does Nebraska’s proposed SIP revision do?*

In the submissions, Nebraska proposed a SIP revision to its GHG construction permit related regulations and submitted its proposal to EPA for parallel processing and eventual approval as the corrective SIP revision in anticipation of EPA’s SIP call. If and when EPA approves this SIP revision, Nebraska will have authority to issue PSD permits to GHG-emitting sources, and thereby assure that those sources will be able to construct or undertake modifications after January 1, 2011. In addition, this SIP revision establishes the Tailoring Rule thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under the PSD program. Without these Tailoring Rule thresholds, PSD requirements would apply, as of January 2, 2011, at the 100- or 250-tpy levels provided under the CAA. This would greatly increase the number of required permits, would impose undue costs on small sources, and would overwhelm Nebraska’s permitting resources and severely impair the function of the program.

Specifically, Nebraska’s proposed SIP revision includes changes to Chapter 1 of Title 129 of the Nebraska Administrative Code—*Definitions*. These revisions update Nebraska’s air regulations by providing the state the authority to regulate GHGs and aligning the thresholds for GHG permitting applicability with those specified in the Tailoring Rule. The proposed SIP revisions also include a change to Chapter 5 of Title 129 of the Nebraska Administrative Code—*Operating*

*Permits—When Required*. This revision allows sources to limit their potential to emit in order to become a synthetic minor source.

The proposed SIP revision also adopts those portions of the NSR Reform rules which were not vacated or remanded by the Court, and includes changes to Chapter 2 of Title 129 of the Nebraska Administrative Code—*Definition of Major Source*, Chapter 14 of Title 129 of the Nebraska Administrative Code—*Permits: Public Participation*, Chapter 15 of Title 129 of the Nebraska Administrative Code—*Permit Revisions; Reopening for Cause*, Chapter 17 of Title 129 of the Nebraska Administrative Code—*Construction Permits—When Required*, and Chapter 19 of Title 129 of the Nebraska Administrative Code—*Prevention of Significant Deterioration of Air Quality*. These changes adopt portions of the 2002 NSR Reform rules. These revisions have already been adopted and are effective at the state level. Thus, unlike the Tailoring Rule revisions where the state is in the process of adopting the proposed revisions, these rules are not subject to parallel processing. Nebraska’s proposed SIP revision includes the 2002 NSR Reform provisions for determining baseline actual emissions, adopting actual-to-projected actual methodology for determining whether a major modification has occurred, and allowing plantwide applicability limits (PALs). Nebraska’s proposed SIP revision does not include the 2002 NSR Reform provisions relating to clean units, pollution control projects (PCPs), and reasonable possibility recordkeeping provisions. In addition, Nebraska’s submittal does not include a change to the named source category list in Chapter 2, which changed the designation of “chemical processing plants” to exclude certain ethanol production facilities. Therefore, this proposed action does not propose to approve into the SIP EPA’s “ethanol rule” revision promulgated in May 2007.

EPA is proposing in today’s action to simultaneously approve Nebraska’s proposed SIP revisions relating to GHGs and NSR Reform. In the alternative, EPA is also soliciting public comment on whether it should initially only approve the SIP revisions related to GHGs in this rulemaking, and address the proposed SIP revisions related to the NSR Reform provisions in a subsequent final action. Under this alternative, Nebraska’s SIP-approved rules that are applicable to the State’s authority to regulate GHG would stem from the provisions of EPA’s Federal PSD rules as of July 1, 1997, in conjunction with Nebraska’s revised regulations which change the definition

<sup>9</sup>“Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.” 75 FR 25324 (May 7, 2010).

of “NSR regulated pollutant” to provide NDEQ with the authority to regulate GHGs.

*B. Why is approval of Nebraska’s proposed SIP revision consistent with the Clean Air Act?*

With respect to the GHG part of the SIP submission, Nebraska has received a SIP call because its PSD program does not apply to GHGs, and as a result, Nebraska is required to submit, by March 1, 2010, a SIP revision that applies PSD to GHGs and does so either at the Tailoring Rule thresholds or at lower thresholds and, if the latter, then Nebraska is required to demonstrate that it has adequate resources for implementation. In its letter dated September 30, 2010, referenced above, Nebraska notified EPA that the state is in the process of revising its regulation (the subject of this proposed action) to provide this authority. It will do so by updating the definitions of “major source” and “regulated NSR pollutant” to explicitly include GHG as a regulated NSR pollutant. In addition, the Nebraska rules incorporate the same thresholds and phase-in schedule as the Tailoring Rule and they adopt the CO<sub>2</sub>e metric and use of short tons for determining the thresholds.

EPA has preliminarily determined that this change to Nebraska’s regulation meets the requirements of the SIP call. Thus, this change is consistent with the CAA and its implementing regulations regarding GHG. The changes included in this submittal are substantively the same as EPA’s Tailoring Rule, and therefore comply with the requirements of the SIP call. The Nebraska rules have been formatted to conform to Nebraska’s rule drafting standards, but in substantive content the rules that address the Tailoring Rule provisions are the same as the federal rules.

With respect to the NSR Reform part of the proposed SIP revision, Nebraska’s proposed SIP revision tracks the Federal NSR Reform Rules, and EPA previously determined that the implementation of the Federal NSR Reform Rules will be environmentally beneficial. (See 68 FR 44620 and 63021). Section 110(k) of the CAA provides that EPA shall approve a SIP revision as a whole if it meets all the applicable requirements of the CAA. EPA’s Supplemental Analysis for the Federal NSR Reform Rules estimated that there are likely to be reductions in emissions of volatile organic compounds (VOC) due to the use of PALs. It is more difficult to assess the environmental impacts of the actual-to-projected-actual test and the “2 in 10” baseline provisions. The Supplemental Analysis determined that there is a

slight national environmental benefit brought about by these NSR Reform provisions. Overall, we expect changes in air quality as a result of implementing PALs, the actual-to-projected-actual test, and the “2 in 10” baseline provisions in Nebraska to be somewhere between neutral and providing modest benefits toward air quality improvements. Accordingly, EPA believes that these changes are consistent with the requirements of section 110(l).

In addition, the Nebraska NSR Reform rules are, in substantive content, the same as EPA’s December 2002 NSR Reform rule, as it relates to PALs, the “actual to projected actual” test, and the calculation of baseline actual emissions. As stated previously, Nebraska has not adopted the other provisions of the federal rule vacated or remanded by the Court in the *New York* case.<sup>10</sup>

#### IV. Proposed Action

Pursuant to sections 110(k)(3) and 110(l) of the CAA, EPA is proposing to approve the state of Nebraska’s proposed revisions to the Nebraska Administrative Code that were submitted to EPA relating to PSD requirements for GHG-emitting sources. Specifically, Nebraska’s submissions meet the requirements of the GHG SIP Call because they (1) provide the state of Nebraska with the authority to regulate GHGs under its PSD program, and (2) establish appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA’s Tailoring Rule. EPA is also proposing to approve prior revisions to Nebraska’s PSD rule, identified above, which incorporate portions of EPA’s 2002 NSR Reform rule. EPA has made the preliminary determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs, and with the EPA regulations implementing NSR Reform.

As noted above, at Nebraska’s request, EPA is “parallel processing” this proposed rule revision as it relates to GHGs. After Nebraska submits the formal state-effective rule revisions (including a response to all public comments raised during the state’s public participation process), EPA will

<sup>10</sup> As stated above, EPA is proposing in today’s action to simultaneously approve Nebraska’s proposed SIP revisions relating to GHGs and NSR Reform. In the alternative, EPA is also soliciting public comment on whether it should initially only approve the SIP revisions related to GHGs in this rulemaking, and address the proposed SIP revisions related to the NSR Reform provisions in a subsequent final action.

prepare a final rulemaking notice for the SIP revision. If changes are made to the state’s proposed rule after EPA’s notice of proposed rulemaking, such changes must be acknowledged in EPA’s final rulemaking action. If the changes are significant, then EPA may be obliged to re-propose the action. In addition, if these changes render the SIP revision not approvable, EPA’s re-proposal of the action would be a disapproval of the revision.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves the state’s law as meeting federal requirements and does not impose additional requirements beyond those imposed by the state’s law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human



health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state of Nebraska, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

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

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

Dated: December 15, 2010.

**William W. Rice,**

*Acting Regional Administrator, Region 7.*

[FR Doc. 2010-32456 Filed 12-23-10; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[EPA-R08-RCRA-2010-0933, FRL-9244-1]

#### South Dakota: Final Authorization of State Hazardous Waste Management Program Revision

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

**ACTION:** Proposed Rule.

**SUMMARY:** The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize states to operate their hazardous waste management programs in lieu of the federal program. South Dakota has applied to EPA for final authorization of the changes to its hazardous waste program under RCRA. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the State's changes through this proposed final action.

**DATES:** Comments must be received by *January 26, 2011.*

**ADDRESSES:** Submit your comments by one of the following methods:

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

- *E-mail:* [cosentini.christina@epa.gov](mailto:cosentini.christina@epa.gov).

- *Fax:* (303) 312-6341 (prior to faxing, please notify the EPA contact listed below).

- *Mail, Hand Delivery or Courier:* Deliver your comments to Christina Cosentini, Solid and Hazardous Waste Program, EPA Region 8, Mailcode 8P-HW, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Courier or hand deliveries are only accepted during the Regional Office's normal hours of operation. The public is advised to call in advance to verify the business hours. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No.: EPA-R08-RCRA-2010-0933. EPA's policy is that all comments received will be included in the public docket without change, 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 [regulations.gov](http://www.regulations.gov), or e-mail. The federal Web site <http://www.regulations.gov> 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>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information may not be 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 through <http://www.regulations.gov> or in hard copy at: EPA Region 8, from 8 a.m. to 4 p.m.,

1595 Wynkoop Street, Denver, Colorado, contact: Christina Cosentini, phone number (303) 312-6231, or the South Dakota Department of Environment and Natural Resources, from 9 a.m. to 5 p.m., Joe Foss Building, 523 East Capitol Avenue, Pierre, SD 57501, contact: Carrie Jacobson, phone number (605) 773-3153. The public is advised to call in advance to verify business hours.

#### FOR FURTHER INFORMATION CONTACT:

Christina Cosentini, Solid and Hazardous Waste Program, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202, (303) 312-6231, [cosentini.christina@epa.gov](mailto:cosentini.christina@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Why are revisions to state programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

##### B. What decisions have we made in this rule?

We conclude that the State of South Dakota's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant South Dakota final authorization to operate its hazardous waste program with the changes described in the authorization application. South Dakota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs), and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA) for all areas within the State except for lands located within formal Indian Reservations within or abutting the State of South Dakota, including the Cheyenne River Indian Reservation, Crow Creek Indian Reservation, Flandreau Indian Reservation, Lower Brule Indian Reservation, Pine Ridge Indian Reservation, Rosebud Indian