

Material	Usage (lbs/yr)	Weight Percent VOC
Exon 470	1,668	65.4
9L Clear	2,451	77.1
White M lacq	3,467	47.0
Tedlar Gr. Vehicle	1,050	66.7
TH-98	22,047	73.2
TH-57	59	69.5
TH-14M	16,520	0.7
PS 160	10,644	3.0
#1 tint	4,872	69.3
#2 tint	4,256	83.7
Roto Color	13,884	62.0
1st SS White	25,740	51.5
2nd SS White	25,740	51.5
Clean Up	108,742	100.0
Other Materials	400	100.0

(ii) The yearly weight of material used is to be calculated as follows:

(A) Compute the weight of each ink, coating, thinner, clean-up material, and other VOC-containing material used each month by the 15th of the following month.

(B) By the 15th of each month, add the monthly usage (in pounds) for each ink, coating, thinner, clean-up material, and other VOC-containing material for the twelve previous months (to obtain the yearly weight of each ink, coating, thinner, clean-up material used). A comparison of these yearly usage levels (in pounds) with purchase records must be made to ensure the accuracy of the monthly usage levels (in pounds) obtained to satisfy paragraph (x)(14)(ii)(A) of this section.

(iii) Beginning on August 1, 1992, the owner and operator of the American Decal and Manufacturing Company plant in Chicago, Illinois, shall keep the following records for each ink, coating, thinner, clean-up material, and other VOC-containing material for each month. All records shall be kept by the American Decal and Manufacturing Company for 3 years and shall be made available to the Administrator on request:

(A) The name and identification number of each ink, coating, thinner, clean-up material, and other VOC-containing material as applied or used.

(B) The weight percent VOC of each ink, coating, thinner, clean-up material, and each other VOC-containing material as applied or used each month.

(C) The as applied weight of each ink, coating, thinner, clean-up material, and other VOC-containing material used each month.

(iv) Any record showing a violation of paragraph (x)(14)(i) of this section after October 20, 1995 shall be reported by sending a copy of such record to the Administrator within 30 days of the violation.

(v) To determine compliance with paragraph (x)(14)(i) of this section and to establish the records required under paragraph (x)(14)(iii) of this section, the weight percent VOC of each ink, coating, thinner, clean-up material, and other VOC-containing material shall be determined by the applicable test methods and procedures specified in paragraph (a)(4) of this section. Any material reported to be 100 percent VOC does not have to be tested for weight percent VOC.

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BILLING CODE 6560-50-P

40 CFR Parts 52 and 61

[ND6-1-6534a, ND2-1-6064a; FRL-5261-6]

Clean Air Act Approval and Promulgation of State Implementation Plan for North Dakota; Revisions to the Air Pollution Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the State implementation plan (SIP) revisions submitted by the State of North Dakota with letters dated June 26, 1990, June 30, 1992, and April 29, 1994. The revisions address air pollution control rules regarding general provisions; emissions of particulate matter and organic compounds; new source performance standards (NSPS); national emission standards for hazardous air pollutants (NESHAPs); construction and operating permit programs; prevention of significant deterioration (PSD) of air quality; and control of emissions from oil and gas well production facilities. The April 29, 1994 submittal also addressed the following two issues which will be acted on in separate documents: Revisions to the PSD rules with respect to PM₁₀ increments; and revisions to the visibility monitoring chapter of the SIP. Further, EPA is approving the State's construction permit and federally enforceable State operating permit (FESOP) programs under section 112(l) of the amended Clean Air Act (Act) for the purposes of creating federally enforceable permit conditions for sources of hazardous air pollutants (HAPs).

DATES: This final rule is effective on October 20, 1995, unless comments are received in writing by September 20, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405; North Dakota State Department of Health and Consolidated Laboratories, Environmental Health Section, 1200 Missouri Avenue, Bismarck, North Dakota, 58502-5520; and The Air and Radiation Docket and Information Center, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region VIII, (303) 293-1769.

SUPPLEMENTARY INFORMATION:

I. Background

The State submitted various revisions to its air pollution control rules with letters to EPA dated June 26, 1990, June 30, 1992, and April 29, 1994. These revisions were necessary to make the rules consistent with Federal requirements. Portions of the 1990 and 1992 submittals were acted on previously (see 56 FR 12848, March 28, 1991; 56 FR 28322, June 20, 1991; 57 FR 28619, June 26, 1992; 58 FR 5294, January 21, 1993; and 58 FR 54041, October 20, 1993).

II. This Action

A. Analysis of State Submissions

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) and 57 FR 13565]. EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

To entertain public comment, the State of North Dakota, after providing adequate notice, held public hearings on January 3, 1990, October 16, 1991, and September 28, 1993 to address the respective revisions to the SIP and Air Pollution Control Rules. Following the public hearings, the North Dakota State Health Council adopted the respective rule revisions.

The Governor of North Dakota submitted revisions to the SIP with letters dated June 26, 1990, June 30, 1992, and April 29, 1994. The SIP revisions were reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. The submittals were found to be complete and letters dated October 22, 1990, August 27, 1992, and June 22, 1994 were forwarded to the Governor indicating the completeness of the respective submittals and the next steps to be taken in the review process.

2. June 26, 1990 Revisions

The June 26, 1990 submittal addresses North Dakota Air Pollution Control Rules involving general provisions, ambient air quality standards, emissions of particulate matter, control of pesticides, NSPS, NESHAPs, permitting, PSD, and emissions from oil and gas well production facilities. Most of the revisions were approved in separate **Federal Register** notices (see 56 FR 12848, March 28, 1991; 56 FR 28322, June 20, 1991; 57 FR 28619, June 26, 1992). However, one section of the June 26, 1990 submittal was not addressed in those approvals. That section was 33-15-13-02 regarding revised asbestos NESHAP regulations. The 1990 asbestos regulation revision was superseded by the State's revised asbestos NESHAP rules in the April 29, 1994 submittal, which EPA has determined to be consistent with Federal requirements and approvable.

3. June 30, 1992 Revisions

Portions of the June 30, 1992 submittal involving revisions to the State's rules regarding emissions of sulfur compounds, NSPS, and NESHAPs (excluding asbestos) were approved in the **Federal Register** on January 21, 1993 (see 58 FR 5294) and October 20, 1993 (see 58 FR 54041). The remaining portions are being addressed in this document and involve the following sections of the North Dakota Air Pollution Control Rules: 33-15-01 General Provisions; 33-15-05 Emissions of Particulate Matter Restricted; 33-15-07 Control of Organic Compounds Emissions; 33-15-13 Emission Standards for Hazardous Air Pollutants

(specifically, the section regarding the asbestos NESHAP); 33-15-15 Prevention of Significant Deterioration of Air Quality; and 33-15-20 Control of Emissions from Oil and Gas Well Production Facilities.

a. Chapter 33-15-01 General Provisions. The definition of volatile organic compound (VOC) was updated. This VOC definition is superseded by the State's April 29, 1994 submittal, which included a revised VOC definition that EPA has determined to be approvable. Also, in the 1992 submittal, administrative information was updated to reflect the Department's new telephone number. These administrative revisions are minor and approvable.

b. Chapter 33-15-05 Emissions of Particulate Matter Restricted. Provisions were removed which allowed the State discretion in approving alternatives to using multiple chamber incinerators for the burning of refuse, per EPA's request. Also, language was added to specify a testing methodology for determining particulate emissions that have a diameter of 10 microns or less. These revisions are consistent with Federal requirements and therefore, approvable.

c. Chapter 33-15-07 Control of Organic Compounds Emissions. Revisions made to this chapter include the following:

(i) All references to "volatile organic liquids" were changed to read "volatile organic compounds."

(ii) "Volatile organic liquid-water separator" has been changed to read "volatile organic compounds-water separator," and the term was defined.

(iii) Several other definitions were corrected or clarified.

(iv) The provision was eliminated that allowed the State discretion in approving alternatives to using the appropriate rotating pumps and compressors to handle volatile organic compounds, per EPA's request.

(v) To be more specific regarding intent, language was changed to read "The emissions from all devices designed for incinerating, flaring, or treating waste organic compound gases and vapors shall result in compliance with Chapters 2 and 16 of this article," *i.e.*, compliance with the ambient air quality standards.

These revisions strengthen this rule and, therefore, are approvable.

d. Chapter 33-15-13 Emission Standards for Hazardous Air Pollutants. Section 33-15-13-02, regarding emission standards for asbestos, was revised. These revisions are superseded by the State's most recent asbestos NESHAP revisions contained in the April 29, 1994 submittal (see below),

which EPA has determined to be approvable.

e. Chapter 33-15-15 Prevention of Significant Deterioration of Air Quality. The definition of "volatile organic compounds" was added to match EPA's definition. The definition excludes the compounds identified by EPA as "negligibly photochemical reactive" from the requirements of this chapter since EPA has determined that they are not considered significant precursors to ozone. Other minor changes were made to make the State rule consistent with the Federal rule. These revisions are consistent with Federal requirements and, therefore, are approvable.

f. Chapter 33-15-20 Control of Emissions From Oil and Gas Well Production Facilities. A definition for "continuous burning pilot" was added and the reporting requirements were clarified. The provision was removed which allowed the State discretion in approving alternative methods of calculation for determining PSD applicability for sulfur dioxide, per EPA's request. These revisions are consistent with Federal requirements and therefore, approvable.

4. April 29, 1994 Revisions

The April 29, 1994 submittal addresses visibility monitoring requirements outlined in Chapter 6 of the SIP. However, in a January 26, 1995 letter from Dana Mount, North Dakota Division of Environmental Engineering, to Douglas Skie, EPA, the State indicated that a superseding SIP revision regarding visibility monitoring would be forthcoming and requested that EPA take no action at this time on its April 1994 visibility monitoring revisions. Accordingly, EPA declines to take action on the visibility monitoring revisions included in North Dakota's April 29, 1994 submittal.

The April 29, 1994 submittal also addresses the following chapters of the North Dakota Air Pollution Control Rules: 33-15-01 General Provisions; 33-15-12 Standards of Performance for New Stationary Sources; 33-15-13 Emission Standards for Hazardous Air Pollutants; 33-15-14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate; and 33-15-15 Prevention of Significant Deterioration of Air Quality. The revisions to Chapter 33-15-15 will be addressed in a separate action.

a. Chapter 33-15-01 General Provisions. Under Subsection 33-15-01-04, a definition of "federally enforceable" was added and the definition of "volatile organic compounds" was modified to match the Federal definition in 40 CFR 51.100.

These revisions are consistent with Federal requirements and therefore, approvable.

b. Chapter 33-15-12 Standards of Performance for New Stationary Sources; Chapter 33-15-13 Emission Standards for Hazardous Air Pollutants. The revisions to 33-15-12 and 33-15-13 incorporate by reference the Federal NSPS in 40 CFR part 60 and the Federal NESHAPs in 40 CFR part 61, as in effect on May 1, 1993, with the exception of 40 CFR part 61, subparts B, H, I, K, Q, R, T, and W (*i.e.*, radionuclides). The State's asbestos rules were updated to reflect the Federal asbestos rule in effect on May 1, 1993, as found in 40 CFR part 61, subpart M. EPA has reviewed the State's revised NSPS and NESHAPs regulations and determined that they are consistent with the Federal regulations, and, therefore, approvable.

c. 33-15-14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate. Section 33-15-14-01 was modified to list several new designated air pollution source categories. New categories include the following: (1) Chemical process facilities involving cresylic acids, phenol, or polymer manufacturing and coating operations; (2) metallurgical facilities involving electrolytic plating operations; (3) mineral products facilities involving calciners and dryers; (4) wood processing facilities involving sawmills or wood products manufacturing; (5) municipal waste combustors; (6) stationary gas turbines; (7) lead acid battery manufacturing; and (8) hydrocarbon contaminated soil remediation projects. Also, a new section of definitions was added.

The construction permit section of this chapter, 33-15-14-02, was amended to clarify that initiation of certain activities that do not require a construction permit are at the owner's or operator's own risk. This section was also amended to require a construction permit if a change at a facility would increase the ambient concentration of a contaminant by a specified amount. However, certain scenarios at existing sources were listed that would not be considered a change in the method of operation, *e.g.*, trading of emissions within a facility provided that the trades have been identified and approved in a permit to operate and the total facility emissions do not exceed the facility emissions cap established in the permit to operate. A construction permit would not be required under such scenarios.

The revisions to sections 33-15-14-01 and 33-15-14-02 are consistent with

Federal requirements and, therefore, approvable.

This submittal also contained revisions to the minor source permit to operate section of this chapter, 33-15-14-03. On June 28, 1989, EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of federally enforceable State operating permits (FESOPs) (see 54 FR 27282). Permits issued pursuant to an operating permit program, which has been approved into the SIP as meeting these criteria may be considered federally enforceable. EPA has encouraged States to develop such FESOP programs in conjunction with title V operating permit programs to enable sources to limit their potential to emit to below the title V applicability thresholds. (See the September 18, 1992 guidance document entitled, "Limitation of Potential to Emit with Respect to Title V Applicability Thresholds," from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation, U.S. EPA.) On November 3, 1993, EPA announced in a guidance document entitled, "Approaches to Creating Federally Enforceable Emissions Limits," from John S. Seitz, Director, OAQPS, that this mechanism could be extended to create federally enforceable limits for emissions of HAPs if the program were approved pursuant to section 112(l) of the Act. (See Section II.A.5. of this document for further details on EPA's Section 112(l) approval of North Dakota's FESOP program.)

North Dakota adopted revisions to its minor source operating permit requirements in Section 33-15-14-03 of the State's rules to meet the criteria of the June 29, 1989 **Federal Register** notice. That **Federal Register** notice establishes five criteria which must be met in order for EPA to approve a state operating permit program into the SIP: (1) The program must be submitted to and approved by EPA; (2) the program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit, and permits that do not conform with the criteria outlined in the June 28, 1989 **Federal Register** notice or EPA's underlying regulations shall be deemed not federally enforceable; (3) any permit issued under the program must contain terms and conditions that are at least as stringent as any requirements contained in the SIP, enforceable under the SIP, or any section 112 or other CAA requirement, and may not allow for the waiver of any CAA requirement; (4) any permit issued under the program must contain conditions that are permanent,

quantifiable, and enforceable as a practical matter; and (5) any permit that is intended to be federally enforceable must be issued subject to public participation and must be provided to EPA in proposed form on a timely basis.

EPA has reviewed North Dakota's FESOP program and has determined that it meets the requirements outlined in the June 28, 1989 **Federal Register** notice. (See the Technical Support Document associated with this action for further information.) Thus, EPA is approving North Dakota's FESOP program. Permits that conform to the State's rules and that are enforceable as a practical matter will be considered federally enforceable. Note that in this action EPA is approving North Dakota's minor source operating permit program, but not the 40 CFR part 70 operating permit program in Chapter 33-15-14-06 of the State rules (which will be acted on separately).

5. Approval of North Dakota's Construction Permit and FESOP Programs Under Section 112(l) of the Act

In this action, EPA is also approving North Dakota's construction permit and FESOP programs in Chapters 33-15-14-02 and 33-15-14-03 of the State's rules, respectively, under section 112(l) of the Act for the purpose of creating federally enforceable limits on the potential to emit of HAPs listed pursuant to section 112(b) of the Act. Approval under section 112(l) is necessary to allow the State to create federally enforceable limits on the potential to emit of HAPs, because SIP approval of these permitting programs only extends to the control of HAPs which are photochemically reactive organic compounds or particulate matter. Federally enforceable limits on photochemically reactive organic compounds or particulate matter may have the incidental effect of limiting certain HAPs.¹ As a legal matter, no additional program approval by EPA is required in order for these "criteria" pollutant limits to be recognized as federally enforceable. However, section 112 of the Act provides the underlying authority for controlling all HAPs emissions.

¹ EPA issued guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAPs to below section 112 major source levels. Please refer to EPA's January 25, 1995 memorandum from John S. Seitz and Robert I. Van Heuvelen entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source under Section 112 and Title V of the Clean Air Act," available at the EPA office listed at the beginning of this document.

Both the State's construction permit and FESOP programs apply to any "air contaminant sources," and "air contaminant" is defined in the State's rules as "any solid, liquid, gas, or odorous substance or any combination thereof." The State has defined "air contaminant" in such a broad manner that it includes HAPs. Consequently, the State's construction permit and FESOP programs provide authority for the State to issue permits to sources of HAPs.

The criteria which are used in approving minor source construction permit programs are located in 40 CFR 51.160-164. North Dakota's construction permit program was originally approved as meeting the criteria currently in 40 CFR 51.160-163 on May 26, 1977 (42 FR 26977) and as meeting the criteria in 40 CFR 51.164 on November 14, 1988 (53 FR 45673). The Technical Support Document (TSD) accompanying this section 112(l) approval details how North Dakota's construction permit rules in 33-15-14-02 meet these Federal criteria for approvability.

EPA believes the most significant criteria for creating federally enforceable limits through construction permits are the criteria outlined in 40 CFR 51.160-162. Further, as discussed in EPA's January 25, 1995 memorandum from John S. Seitz, Director of the Office of Air Quality Planning and Standards, and Robert I. Van Heuvelen, Director of the Office of Regulatory Enforcement, entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act," in order for EPA to consider any construction permit terms federally enforceable, such permit conditions must be enforceable as a practical matter. North Dakota's construction permit program will allow the State to issue permits that are enforceable as a practical matter. Thus, any permits issued in accordance with North Dakota's construction permit program that are practically enforceable would be considered federally enforceable.

EPA believes that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989 **Federal Register** notice, are also appropriate for evaluating and approving the programs under section 112(l). The requirements outlined in the June 28, 1989 notice need not be unique to criteria pollutants since the reason that the notice does not address HAPs is simply that it was written prior to the 1990 Amendments to section 112. Hence, the criteria discussed above in Section II.A.4.c. of this document are

applicable to FESOP program approvals under section 112(l) of the Act.

In addition to a construction permit program meeting the criteria outlined in 40 CFR 51.160-164 and a FESOP program meeting the criteria outlined in the June 28, 1989 **Federal Register** notice, a permitting program that addresses HAPs must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAPs through amendments to subpart E of 40 CFR part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262, November 26, 1993.) EPA believes it has the authority under section 112(l) to approve programs to limit the potential to emit HAPs directly under section 112(l) prior to this revision to subpart E of 40 CFR part 63. Given the timing problems posed by impending deadlines under section 112 and title V, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. Therefore, EPA is approving North Dakota's construction permit and FESOP programs now so that North Dakota may begin to issue federally enforceable "synthetic minor" permits as soon as possible. EPA also plans to codify programs approved under section 112(l) without further rulemaking once the revisions to Subpart E are promulgated.

As discussed above, EPA believes North Dakota's construction permit and FESOP programs meet the applicable Federal criteria for approval of such programs in the SIP. Section 33-15-14-02, *i.e.*, North Dakota's construction permit program, has been previously approved in the SIP, and EPA is approving Section 33-15-14-03, *i.e.*, North Dakota's FESOP program in this **Federal Register**. In addition, North Dakota's construction permit and FESOP programs meet the statutory criteria for approval under section 112(l)(5), as outlined in the following discussion.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes North Dakota's construction permit and FESOP programs contain

adequate authority to assure compliance with section 112 requirements since the third criterion of the June 28, 1989 **Federal Register** notice is met by both permitting programs, *i.e.*, because the programs do not provide for waiving any section 112 requirement. Sources that become minor through a permit issued pursuant to these programs would still be required to meet section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, EPA believes the State has demonstrated that it can provide for adequate resources to implement and enforce the programs through the fees it charges both for minor source permits to construct and permits to operate. See sections 33-15-14-02.12 and 33-15-14-03.10 of the State rules. EPA will monitor the State's implementation of these programs to assure that adequate resources continue to be available.

EPA also believes that North Dakota's construction permit and FESOP programs provide for an expeditious schedule for assuring compliance with section 112 requirements. These programs will be used to allow a source to establish a voluntary limit on potential to emit so as to avoid being subject to a Federal requirement applicable on a particular date. Nothing in the State's programs would allow a source to avoid or delay compliance with the Federal requirement if it fails to obtain the appropriate federally enforceable limit by the relevant deadline.

Finally, EPA believes it is consistent with the intent of the section 112 and the Act for States to provide a mechanism through which sources may avoid classification as a major source by obtaining a federally enforceable limit on potential to emit.

Accordingly, EPA finds that both North Dakota's construction permit program and its FESOP program satisfy the applicable criteria for establishing federally enforceable limitations on potential to emit both criteria and hazardous air pollutants. Therefore, EPA is approving North Dakota's construction permit and FESOP programs in Sections 33-15-14-02 and 33-15-14-03 of the State's rules, respectively, under section 112(l) of the Act.

III. Final Action

EPA is approving North Dakota's SIP revision, as submitted by the Governor with a letter on April 29, 1994. This submittal addressed revisions to the following North Dakota Air Pollution Control Rules: 33-15-01 General

Provisions; 33-15-12 Standards of Performance for New Stationary Sources; 33-15-13 Emission Standards for Hazardous Air Pollutants; and 33-15-14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate. However, EPA is declining to take action at this time on the revisions to North Dakota Air Pollution Control Rule 33-15-15, regarding prevention of significant deterioration of air quality, and Chapter 6 of the SIP, regarding visibility monitoring requirements. These chapters will be addressed in separate documents.

Further, EPA is approving, under section 112(l) of the Act, North Dakota's construction permit and FESOP programs, as outlined in Sections 33-15-14-02 and 33-15-14-03 of the State's rules, respectively, for the purposes of creating federally enforceable permit conditions on HAPs.

EPA is also approving portions of the State's June 30, 1992 submittal, which were not acted on previously. Specifically, EPA is approving revisions to the following sections of the North Dakota Air Pollution Control Rules: 33-15-01 General Provisions; 33-15-05 Emissions of Particulate Matter Restricted; 33-15-07 Control of Organic Compounds Emissions; 33-15-13 Emission Standards for Hazardous Air Pollutants (specifically, section 33-15-13-02 regarding the asbestos NESHAP); 33-15-15 Prevention of Significant Deterioration of Air Quality; and 33-15-20 Control of Emissions from Oil and Gas Well Production Facilities. Further, EPA is approving the portion of the State's June 26, 1990 submittal, which was not acted on previously, regarding revised asbestos NESHAP regulations (specifically, section 33-15-13-02 of the North Dakota Air Pollution Control Rules). Some of these rule revisions were superseded by the revised rules included in the State's April 29, 1994 submittal, as discussed in this document.

This approval provides the State with the authority for implementation and enforcement of all Federal NSPS and NESHAPs (except 40 CFR part 61, subparts B, H, I, K, Q, R, T, and W, pertaining to radionuclides) promulgated as of May 1, 1993. However, the State's NSPS and NESHAP authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR parts 60 and 61. EPA will be updating the 40 CFR part 60 table of NSPS delegations at a later date.

Note that in this action EPA is approving North Dakota's minor source operating permit program, but not the

40 CFR part 70 operating permit program in section 33-15-14-6 of the State rules (which will be acted on separately). Minor source operating permits issued by the State that conform to the State's rules will be considered federally enforceable. Consequently, the rulemaking authorizes North Dakota to issue FESOPs commencing immediately upon the effective date of this rule, which will be October 20, 1995, unless in the meantime EPA defers or rescinds the effective date at a commenter's request.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document published elsewhere in this **Federal Register**, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective October 20, 1995, unless, by September 20, 1995, adverse or critical comments are received.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on October 20, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air Act do not create any new

requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements since such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 20, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

List of Subjects

40 CFR Part 52

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

40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, and Vinyl chloride.

Dated: July 14, 1995.

Jack W. McGraw,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart JJ—North Dakota

2. Section 52.1820 is amended by adding paragraph (c)(26) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(26) The Governor of North Dakota submitted revisions to the North Dakota

State Implementation Plan and Air Pollution Control Rules with letters dated June 26, 1990, June 30, 1992, and April 29, 1994. The revisions address air pollution control rules regarding general provisions; emissions of particulate matter and organic compounds; new source performance standards (NSPS); national emission standards for hazardous air pollutants (NESHAPs); federally enforceable State operating permits (FESOPs); prevention of significant deterioration of air quality; and control of emissions from oil and gas well production facilities.

(i) Incorporation by reference.

(A) Revisions to the Air Pollution Control Rules as follows: Emissions of Particulate Matter Restricted 33–15–05–02, 33–15–05–03, and 33–15–05–04; Control of Organic Compound Emissions 33–15–07; Prevention of Significant Deterioration of Air Quality 33–15–15–01; and Control of Emissions from Oil and Gas Well Production Facilities 33–15–20–01, 33–15–20–02, and 33–15–20–03, effective June 1, 1992.

(B) Revisions to the Air Pollution Control Rules as follows: General Provisions 33–15–01–04 and 33–15–01–13; Standards of Performance for New Stationary Sources 33–15–12; and Emission Standards for Hazardous Air Pollutants 33–15–13, effective June 1, 1992 and March 1, 1994.

(C) Revisions to the Air Pollution Control Rules as follows: Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to

Operate, Title V Permit to Operate, 33–15–14–01 through 33–15–14–05, effective March 1, 1994.

3. Section 52.1834 is added to subpart JJ to read as follows:

§ 52.1834 Minor source permit to operate program.

Emission limitations and related provisions, which, in accordance with Rule 33–15–14–03, are established as federally enforceable conditions in North Dakota minor source operating permits, shall be enforceable by EPA. EPA reserves the right to deem permit conditions not federally enforceable. Such a determination will be made according to appropriate procedures and will be based upon the permit, permit approval procedures, or permit requirements which do not conform with the operating permit program requirements of EPA's underlying regulations.

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

Subpart A—General Provisions

2. Section 61.04(c) is amended by revising the table to read as follows:

§ 61.04 Address.

* * * * *

(c) * * *

REGION VIII.—DELEGATION STATUS OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS¹

Subpart	CO	MT ²	ND ²	SD ²	UT ²	WY
A General Provisions	*	*	*	*	*	
B Radon Emissions from Underground Uranium Mines					*	
C Beryllium	*	*	*		*	
D Beryllium Rocket Motor Firing	*	*	*	*	*	
E Mercury	*	*	*	*	*	
F Vinyl Chloride	*	*	*		*	
H Emissions of Radionuclides other than Radon from Department of Energy Facilities						
I Radionuclide Emissions from Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities not covered by Subpart H.						
J Equipment Leaks (Fugitive Emission Sources) of Benzene	*	*	*		*	
K Radionuclide Emissions from Elemental Phosphorus Plants		*	*		*	
L Benzene Emissions from Coke By-Product Recovery Plants	*	*	*	*	*	
M Asbestos		*	*		*	*3
N Inorganic Arsenic Emissions from Glass Manufacturing Plants		*	*		*	
O Inorganic Arsenic Emissions from Primary Copper Smelters		*	*		*	
P Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities		*	*		*	
Q Radon Emissions from Department of Energy Facilities					*	
R Radon Emission from Phosphogypsum Stacks					*	
T Radon Emissions from the Disposal of Uranium Mill Tailings					*	
V Equipment Leaks (Fugitive Emission Sources)		*	*		*	
W Radon Emissions from Operating Mill Tailings					*	
Y Benzene Emissions from Benzene Storage Vessels		*	*		*	
BB Benzene Emission from Benzene Transfer Operations		*	*		*	

REGION VIII.—DELEGATION STATUS OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS¹—
Continued

Subpart	CO	MT ²	ND ²	SD ²	UT ²	WY
FF Benzene Waste Operations	*	*	*	

¹Indicates approval of delegation of subpart to state.

¹Authorities which may not be delegated include 40 CFR 61.04(b), 61.12(d)(1), 61.13(h)(1)(ii), 61.112(c), 61.164(a)(2), 61.164(a)(3), 61.172(b)(2)(ii)(B), 61.172(b)(2)(iii)(C), 61.174 (a)(2), 61.174(a)(3), 61.242-1(c)(2), 61.244, and all authorities listed as not delegable in each subpart under Delegation of Authority.

²Indicates approval of National Emission Standards for Hazardous Air Pollutants as part of the State Implementation Plan (SIP) with the exception of the radionuclide NESHAP Subparts B, Q, R, T, W which were approved through Section 112(l) of the Clean Air Act.

³Delegation only for asbestos demolition, renovation, spraying, manufacturing, and fabricating operations, insulating materials, waste disposal for demolition, renovation, spraying, manufacturing and fabricating operations, inactive waste disposal sites for manufacturing and fabricating operations, and operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material.

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48 CFR Parts 1516 and 1552

[FRL-5282-5]

Acquisition Regulation; Cost-Plus-Award Fee Contracts

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document revises the EPA Acquisition Regulation (EPAAR) coverage on cost-plus-award fee (CPAF) contracts. The rule is necessary to update and clarify EPA policy regarding CPAF contracts, and to give Contracting Officers (COs) greater flexibility in tailoring award fee plans to individual contracts.

EFFECTIVE DATE: October 20, 1995.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street SW, Washington, DC 20460, Attn: Louise Senzel (202) 260-6204.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule was published in the **Federal Register** (60 FR 5888) on January 31, 1995, providing for a 30-day comment period. The comment period was extended by publication in the **Federal Register** (60 FR 10535) on February 27, 1995, for an additional 30 days.

Interested persons have been afforded an opportunity to participate in the making of this rule. Due consideration has been given to the 14 comments received. The following is a summary of each comment received and the Agency's disposition of these comments.

1. The commentary accompanying the proposed rule says that the intent is to encourage contractors to perform at the "above satisfactory" or "excellent"

levels. While this is an admirable intent, there is no logical reason to provide no reward at all for "satisfactory" performance. EPA should study FAR 15.901 (b) and (c).

The Agency is aware of the intent of profit as described in FAR subparts 15.901 (b) and (c). Contractors that perform on a "satisfactory" basis will still receive base fee. The Agency policy is that there is no award fee for this level of performance. The Agency is creating a greater incentive for high quality performance. Rewarding work that is satisfactory will not achieve this goal.

2. The proposed rule makes no connection between the ratings (frequently determined by averaging inputs from EPA field personnel, who are the real "customers" of the contract) and the award fee. Thus, there would be no accountability for those making award fee decisions. The proposed rule is an incentive to take advantage of a contractor rather than working to establish a long-term win-win relationship. This is a bad approach to business and a worse approach to government.

Agency internal procedures set forth the process for performing award fee evaluations, and describe the relationship between the ratings of field personnel and the award fee. However, EPA does not believe that it is necessary to describe the details of our internal processes which establish accountability, in the EPA Acquisition Regulation. The EPA disagrees that the rule is an incentive to take advantage of a contractor. The proposed rule represents the intent of the National Performance Review which calls for elimination of unnecessary rulemaking for internal procedures and practices, and focuses on outcomes not processes.

3. What is the purpose of high ratings and low award fee? If the ratings and award fee are not correlated to each other, to what *do* they correlate? This approach sends the message to the contractor that the award fee process is subjective, rather than objective.

The EPA does not believe that there will be high ratings and low award fee. The EPA will pay equivalent fee for the rating received. Award fee is an objective process that requires subjective review of the quality of a contractor's performance. No matter how objectively and well the process parameters are described, the process must still rely on the qualitative judgment of the reviewers in assessing a rating for the contractor's performance.

4. The proposed rule would allow EPA to make unilateral changes to the award fee plan after contract award. Thus, performance would not be evaluated on the same basis that enticed submission of a proposal. This is "bait and switch" at its worst. There would be no appeal of these changes.

The award fee process always permitted the Government to make unilateral changes to the award fee plan after contract award. However, this is not "bait and switch" as the rule will require the contractor to be notified at least 30 days in advance of the basis for determining award fee. Generally, the practice has been to prospectively amend the award fee plan, i.e., the new plan will impact the activities performed after the change in plan and will not apply retroactively to work already performed.

5. EPA seems to believe that contractors look at base fee and award fee as a single number, so that if a contractor received zero award fee out of a (3% pool) and 3% base fee, it received 50% of the available fee. This is inconsistent with the FAR approach to fee and is "logic" not subscribed to by any contractor.

This is not what EPA believes. EPA believes that award fee should not be given for work that is satisfactory or less. EPA believes that to award "satisfactory" work will provide a negative incentive for contractors to perform at higher levels of performance.

6. Government work is already less profitable than other work. A typical