

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 60

[EPA-R08-OAR-2007-0617; FRL-8570-2]

#### Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules and Alternative Monitoring Plan for Mandan Refinery; Delegation of Authority for New Source Performance Standards

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

**ACTION:** Direct final rule and delegation of authority.

**SUMMARY:** EPA is taking direct final action approving revisions to the State Implementation Plan (SIP) as submitted by the Governor of North Dakota with a letter dated March 8, 2007. The revisions affect certain air pollution control rules regarding general provisions, open burning restrictions, permitting, and fugitive emissions. In addition, we are approving a revision to a chapter of the SIP regarding an alternative monitoring plan for the Tesoro Mandan Refinery. This action is being taken under section 110 of the Clean Air Act. EPA is also providing notice that on August 22, 2007, North Dakota was delegated authority to implement and enforce certain New Source Performance Standards as in effect on January 31, 2006.

**DATES:** This action is effective on July 28, 2008 without further notice, unless EPA receives adverse comment by June 26, 2008. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2007-0617, by one of the following methods:

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

- E-mail: [Platt.Amy@epa.gov](mailto:Platt.Amy@epa.gov).
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** section if you are faxing comments).

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

- Hand Delivery: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-

AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R08-OAR-2007-0617. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at

the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Amy Platt, EPA Region 8, at (303) 312-6449, or [Platt.Amy@epa.gov](mailto:Platt.Amy@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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#### Definitions

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

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

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

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

(iv) The words *State* or *ND* mean the State of North Dakota, unless the context indicates otherwise.

(v) The initials *NDDH* mean or refer to the North Dakota Department of Health.

#### I. General Information

##### A. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

## II. Background

The Act requires States to follow certain procedures in developing implementation plans and plan revisions for submission to us. Sections 110(a)(2) and 110(l) of the Act provide that each implementation plan must be adopted after reasonable notice and public hearing.

To provide for public comment, the North Dakota Department of Health (NDDH), after providing notice, held a public hearing on May 4, 2006 to consider the revisions to the State Implementation Plan (SIP) and Air Pollution Control Rules. Following the public hearing, comment period, and legal review by the North Dakota Attorney General's Office, NDDH adopted the revisions. The revisions to the Air Pollution Control Rules became effective on January 1, 2007 and the revision to the SIP chapter regarding an alternative monitoring plan for the Tesoro Mandan Refinery became effective on February 27, 2007. The North Dakota Governor submitted the SIP revisions to us with a letter dated March 8, 2007.

## III. Revisions in the March 8, 2007 Submittal That Are the Subject of This Document

The revisions in the March 8, 2007 submittal to be addressed in this document pertain to certain portions of the North Dakota Air Pollution Control

Rules regarding general provisions, open burning, permitting, and fugitive emissions. These revisions involve the following chapters of the North Dakota Administrative Code (N.D.A.C.): 33–14–01 General Provisions; 33–15–04 Open Burning Restrictions; 33–15–14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (certain sections specific to permit to construct); and 33–15–17 Restriction of Fugitive Emissions. In addition, the March 8, 2007 submittal included a revision to SIP Chapter 8, Source Surveillance, to provide an alternative monitoring plan for the Tesoro Mandan Refinery.

### A. Chapter 33–15–01, N.D.A.C., General Provisions

Sections 33–15–01–04 and 33–15–01–05 were revised. In section 33–15–01–04, the baseline date for the incorporation by reference of the Federal definition of “volatile organic compounds,” located at 40 CFR 51.100(s), was updated to January 1, 2006. In section 33–15–01–05, a slight editorial change was made to the meaning of the abbreviation for PM<sub>10</sub>. These revisions were made to match Federal requirements and are approvable.

### B. Chapter 33–15–04, N.D.A.C., Open Burning Restrictions

Sections 33–15–04–01 and 33–15–04–02 were revised. Section 33–15–04–01, Refuse Burning Restrictions, was revised to clarify that the burning of trade waste is not allowed. As defined in the General Provisions chapter (33–15–01–04, N.D.A.C.), trade waste means solid, liquid, or gaseous waste material resulting from construction or the conduct of any business, trade, or industry, or any demolition operation, including wood, wood containing preservatives, plastics, cartons, grease, oil, chemicals, and cinders.

In section 33–15–04–02, Permissible Open Burning, a reference to the North Dakota Rural Fire Contingency Plan was removed since this document no longer exists. In addition, changes were made to limit approval of open burning to abate a fire hazard to the NDDH or its designee, as well as to require State and Federal agencies that conduct prescribed burning to submit an annual report upon request by NDDH. Finally, a notification requirement was replaced by a requirement that prohibits open burning when a burning ban is declared by State or local officials.

These changes clarified existing rules, eliminated out-of-date references, and added reporting requirements for State

and Federal prescribed burning. These revisions are approvable.

### C. Chapter 33–15–14, N.D.A.C., Designated Air Contaminant Sources, Permit To Construct, Minor Source Permit To Operate, Title V Permit To Operate (Certain Sections Specific To Permit To Construct)

In the Permit to Construct section, 33–15–14–02, subdivision 33–15–14–02.13.c was revised. These revisions relate to certain sources that will now be exempt from requirements for a permit to construct. Specifically, an exemption was added for any internal combustion engine, or multiple engines at the same facility, with a total combined actual emission rate of 5 tons per year or less of any air contaminant for which an ambient air quality standard has been promulgated in section 33–15–02–04. Given that this revision reduces the stringency of the rule, EPA requested a demonstration that the revision will not interfere with attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), Prevention of Significant Deterioration of Air Quality Increments (PSD Increments), or any other requirement of the Clean Air Act.

In a July 7, 2006 letter from Terry O'Clair, NDDH, to Richard Long, EPA, NDDH provided results from a SCREEN3<sup>1</sup> modeling run which shows that a typical internal combustion engine emitting 5 tons a year of nitrogen dioxide (NO<sub>2</sub>) will not violate the NAAQS or PSD increments. Based on AP–42 emission factors for this type of engine, NO<sub>2</sub> has the larger emission rate and would be the pollutant of concern, while CO and PM emission rates are much lower for such engines and would not be expected to threaten the NAAQS or PSD increments. As a result, EPA is satisfied that this revision will not adversely impact the NAAQS or PSD increments. Therefore, this revision is approvable.

In addition, subdivision 33–15–14–02.13.o was revised to remove a reference to subdivision n of subsection 1 of section 33–15–14–06. Section 33–15–14–06, subsection 1, contains the State's definitions for the Title V operating permits program. The previous reference to subdivision n was to the definition of “major source,” and the purpose of the reference was to define oil and gas production facilities that either were or were not major sources. Now the definition of “major

<sup>1</sup> SCREEN3 is a single source Gaussian plume screening model which provides, among other things, maximum ground-level concentrations for point, area, flare, and volume sources.

source” is found at subdivision o. Rather than include a reference to a new subdivision letter that might change again, the State changed the reference to be at the more general subsection level. This was purely a housekeeping change and is approvable.

*D. Chapter 33–15–17, N.D.A.C., Restriction of Fugitive Emissions*

A provision was added to section 33–15–17–02 to restrict fugitive particulate emissions that would have an adverse impact on visibility on any Class I Federal area. The NDDH made this revision to help prevent degradation of visibility in Theodore Roosevelt National Park and Lostwood Wilderness Area due to fugitive emissions. This revision is approvable.

*E. SIP Chapter 8, “Source Surveillance,” Section 8.3.1, “Continuous Opacity Monitoring for Fluid Bed Catalytic Cracking Units: Tesoro Refining and Marketing Co., Mandan Refinery”*

The Tesoro Refining and Marketing Company (Tesoro) currently operates a fluidized bed catalytic cracking unit (FCCU) at the Mandan Refinery. The refinery was constructed in the 1950s and is required to continuously monitor the opacity of emissions from the FCCU according to 40 CFR Part 51, Appendix P, and North Dakota SIP Chapter 8, Source Surveillance. In May 1977, the NDDH issued an order requiring the installation and operation of continuous opacity monitoring (COM) equipment for emissions from the FCCU, and the opacity has been continuously monitored since the compliance date of September 30, 1978.

In 2001, Tesoro entered into a Consent Decree with EPA to settle allegations of noncompliance under the Prevention of Significant Deterioration Program. As part of this settlement, Tesoro was required to control SO<sub>2</sub> emissions from the FCCU. Tesoro installed a wet scrubber and wet electrostatic precipitator (ESP) to comply with the terms of the Consent Decree. The large amount of moisture from the control system has made monitoring of the opacity of emissions using COM equipment infeasible. Specifically, water droplets contained in the flue gas could potentially result in the monitor overstating the true opacity. Therefore, Tesoro requested alternative monitoring procedures and requirements in accordance with 40 CFR Part 51, Appendix P, Section 6.0. The NDDH and EPA agreed with Tesoro that such alternative monitoring procedures and requirements were warranted given that the excess moisture in the stack from the wet

scrubber interferes with the COM and makes the COM data inaccurate.

As a result, NDDH revised SIP Chapter 8, “Source Surveillance,” Section 8.3, “Continuous Emission Monitoring Requirements for Existing Stationary Sources, including amendments to Permits to Operate and Department Order.” The revision provided for a new Section 8.3.1, “Continuous Opacity Monitoring for Fluid Bed Catalytic Cracking Units: Tesoro Refining and Marketing Co., Mandan Refinery.” This new section provides alternative monitoring procedures and requirements for the Tesoro Mandan refinery. Tesoro has demonstrated through Method 9 measurements that the FCCU will easily comply with the visible emissions limit of 40% opacity when the scrubber flow rate is at least 2511 gallons per minute (gpm). Therefore, the alternative monitoring plan requires that liquid flow through the wet scrubber at 2511 gpm, or more, on an hourly average basis. If the flow rate is less than 2511 gpm, Tesoro must conduct a Method 9 test each day until the required flow rate is achieved.

In addition, Section 8.3.1 contains, among other things, the following requirements:

1. Tesoro must monitor the liquid flow rate through the wet gas scrubber on a continuous basis.
2. Tesoro must keep records of the liquid flow rate on a continuous basis, and keep such records for at least five years.
3. Tesoro must submit semi-annual deviations reports for the FCCU, listing any time period monitoring is not conducted as outlined in Section 8.3.1 and any time monitoring indicates the required flow rate is not attained. Tesoro must also submit an annual certification indicating compliance with the visible emissions limit.

EPA interprets these provisions such that a failure to maintain a liquid flow rate through the wet scrubber of at least 2511 gpm, one-hour average, is a violation of the SIP.

This alternative monitoring plan was finalized between Tesoro and NDDH on February 27, 2007, and approved by the director of EPA Region 8’s Technical Enforcement Program in an August 24, 2007 letter from Cynthia Reynolds (on behalf of Martin Hestmark) to Ron W. Day, Tesoro Refining and Marketing Company. EPA is satisfied that this alternative monitoring plan will ensure Tesoro complies with the requirements of 40 CFR 51.214 and 40 CFR Part 51, Appendix P, to continuously monitor opacity emissions and will be adequate to ensure Tesoro complies with the SIP

opacity limits that apply to the FCCU at the Mandan Refinery. Accordingly, this approval ratifies the Region 8 Technical Enforcement Program’s approval of the alternative monitoring procedures and requirements reflected in new Section 8.3.1 of the North Dakota SIP.

**IV. Section 110(l)**

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirements of the Act. There are no nonattainment areas in North Dakota. The revisions to the general provisions, open burning restrictions, and fugitive emissions provisions are consistent with Federal requirements, clarifying in nature, and will not interfere with requirements of the Act related to administrative or procedural provisions. Although the revision to the permitting provisions reduces the stringency of the rule, the State has adequately demonstrated through modeling that it will not adversely impact the NAAQS or PSD Increments. The revisions to SIP Chapter 8, regarding the alternative monitoring plan for Tesoro’s Mandan refinery, adequately detail monitoring parameters, frequency of monitoring, wet gas scrubber flow rate requirements, recordkeeping, and reporting requirements to ensure that the refinery can comply with requirements to continuously monitor opacity emissions and will be adequate to ensure Tesoro complies with the SIP opacity limits that apply to the FCCU at the Mandan Refinery. Therefore, these revisions do not interfere with attainment or maintenance of the NAAQS or other applicable requirements of the Act.

**V. Delegation of Authority**

With a July 17, 2007 letter, the Governor of North Dakota requested delegation of authority for revisions to the New Source Performance Standards (NSPS), promulgated in Chapter 33–15–12, N.D.A.C. On August 22, 2007, delegation was given with the following letter:

Ref: 8P–AR

Terry O’Clair, Director, Division of Air Quality, Environmental Health Section, North Dakota Department of Health, 918 E. Divide Avenue, Bismarck, ND 58501–1947

Re: Delegation of Clean Air Act New Source Performance Standards

Dear Mr. O'Clair: With Governor Hoeven's July 17, 2007 letter and your July 18, 2007 letter, the State of North Dakota submitted revisions to its Air Pollution Control Rules and requested, among other things, direct delegation to implement and enforce the Federal New Source Performance Standards (NSPS). Specifically, North Dakota Administrative Code Chapter 33-15-12, Standards of Performance of New Stationary Sources, was revised to update the citation for the incorporated Federal NSPS in 40 CFR Part 60 as those in effect on January 31, 2006, with the exception of subparts Eb, L, M, N, Na, P, Q, R, S, and BB, which have not been adopted by the State.

Subsequent to States adopting NSPS regulations, EPA delegates the authority for the implementation and enforcement of those NSPS, so long as the States' regulations are equivalent to the Federal regulations. EPA reviewed the pertinent statutes and regulations of the State of North Dakota and determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State. Therefore, pursuant to Section 111(c) of the Clean Air Act (Act), as amended, and 40 CFR Part 60, EPA hereby delegates its authority for the implementation and enforcement of the NSPS to the State of North Dakota as follows:

(A) Responsibility for all sources located, or to be located, in the State of North Dakota subject to the standards of performance for new stationary sources promulgated in 40 CFR Part 60. The categories of new stationary sources covered by this delegation are all NSPS subparts in 40 CFR Part 60, as in effect on January 31, 2006, with the exception of subparts Eb, L, M, N, Na, P, Q, R, S, and BB, which have not been adopted by the State. *Note this delegation does not include the emission guidelines in subparts Cb, Cc, Cd, Ce, BBBB, DDDD, and HHHH. These subparts require state plans, which are approved under a separate process pursuant to Section 111(d) of the Act.*

(B) Not all authorities of NSPS can be delegated to States under Section 111(c) of the Act, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) Approving equivalency determinations and alternative test methods, (2) decision-making to ensure national consistency, and (3) EPA rulemaking in order to implement. Enclosed with this letter is a list of examples of sections in 40 CFR Part 60 related to the NSPS being delegated in this letter that cannot be delegated to the State of North Dakota. Please note that the enclosed list has been updated since our July 27, 2005 delegation of authority to implement and enforce the NSPS to the State of North Dakota.

(C) The North Dakota Department of Health (NDDH) and EPA will continue a system of communication sufficient to guarantee that each office is always kept informed and current regarding compliance status of the subject sources and interpretation of the regulations.

(D) Enforcement of the NSPS in the State will be the primary responsibility of the NDDH. If the NDDH determines that such enforcement is not feasible and so notifies EPA, or where the NDDH acts in a manner inconsistent with the terms of this delegation, EPA may exercise its concurrent enforcement authority pursuant to section 113 of the Act, as amended, with respect to sources within the State of North Dakota subject to NSPS.

(E) The State of North Dakota will at no time grant a variance or waiver from compliance with NSPS regulations. Should NDDH grant such a variance or waiver, EPA will consider the source receiving such relief to be in violation of the applicable Federal regulation and initiate enforcement action against the source pursuant to section 113 of the Act. The granting of such relief by the NDDH shall also constitute grounds for revocation of the delegation by EPA.

(F) If at any time there is a conflict between a State regulation and a Federal regulation (40 CFR Part 60), the Federal regulation must be applied if it is more stringent than that of the State. If the State does not have the authority to enforce the more stringent Federal regulation, this portion of the delegation may be revoked.

(G) If the Regional Administrator determines that a State procedure for enforcing or implementing the NSPS is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the NDDH.

(H) Acceptance of this delegation of presently promulgated NSPS does not commit the State of North Dakota to accept delegation of future standards and requirements. A new request for delegation will be required for any standards not included in the State's July 17, 2007 letter.

(I) Upon approval of the Regional Administrator of EPA Region 8, the Director of NDDH may sub-delegate his authority to implement and enforce the NSPS to local air pollution control authorities in the State when such authorities have demonstrated that they have equivalent or more stringent programs in force.

(J) The State of North Dakota must require reporting of all excess emissions from any NSPS source in accordance with 40 CFR Part 60.7(c).

(K) Performance tests shall be scheduled and conducted in accordance with the procedures set forth in 40 CFR Part 60 unless alternate methods or procedures are approved by the EPA Administrator. Although the Administrator retains the exclusive right to approve equivalent and alternate test methods as specified in 40 CFR Part 60.8(b)(2) and (3), the State may approve minor changes in methodology provided these changes are reported to EPA Region 8. The Administrator also retains the right to change the opacity standard as specified in 40 CFR Part 60.11(e).

(L) Determinations of applicability, such as those specified in 40 CFR Part 60.5 and review of plans, as provided for in 40 CFR Part 60.6, shall be consistent with those determinations already made and reviews conducted by the EPA.

(M) Alternatives to continuous monitoring procedures or reporting requirements, as outlined in 40 CFR Part 60.13(i), may be approved by the State only if the specific NSPS grants that authority. Otherwise, EPA retains the authority to review and approve such alternatives.

(N) If a source proposes to modify its operation or facility which may cause the source to be subject to NSPS requirements, the State shall notify EPA Region 8 and obtain a determination on the applicability of the NSPS regulations.

(O) Information shall be made available to the public in accordance with 40 CFR Part 60.9. Any records, reports, or information provided to, or otherwise obtained by, the State in accordance with the provisions of these regulations shall be made available to the designated representatives of EPA upon request.

(P) All reports required pursuant to the delegated NSPS should not be submitted to the EPA Region 8 office, but rather to the NDDH.

(Q) As 40 CFR Part 60 is updated, North Dakota should revise its regulations accordingly and in a timely manner and submit to EPA requests for updates to its delegation of authority.

EPA is approving North Dakota's request for NSPS delegation for all areas within the State except for the following: Lands within the exterior boundaries of the Fort Berthold, Fort Totten, Standing Rock and Turtle Mountain Indian Reservations; and any other areas which are "Indian Country" within the meaning of 18 U.S.C. 1151.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of North Dakota will be deemed to accept all the terms of this delegation. To inform the public of this delegation, EPA will publish an information notice in the **Federal Register** in which this letter will appear in its entirety.

If you have any questions on this matter, please contact me at (303) 312-6241 or Callie Videtich, Director of our Air and Radiation Program, at (303) 312-6434, or toll-free at 1-800-227-8917.

Sincerely,

Stephen S. Tuber

Assistant Regional Administrator  
Office of Partnerships and  
Regulatory Assistance  
Enclosure

cc: Tom Bachman, NDDH

Enclosure to Letter Delegating NSPS in 40 CFR Part 60, Effective Through January 31, 2006, to the State of North Dakota

## EXAMPLES OF AUTHORITIES IN 40 CFR PART 60 WHICH CANNOT BE DELEGATED

40 CFR subparts	Section(s)
A .....	60.8(b)(2) and (b)(3), and those sections throughout the standards that reference 60.8(b)(2) and (b)(3); 60.11(b) and (e); and 60.13(i).
Da .....	60.47Da.
Db .....	60.44b(f), 60.44b(g) and 60.49b(a)(4).
Dc .....	60.48c(a)(4).
Ec .....	60.56c(i), 60.8.
J .....	60.105(a)(13)(iii) and 60.106(i)(12).
Ka .....	60.114a.
Kb .....	60.111b(f)(4), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii).
O .....	60.153(e).
DD .....	60.302(d)(3).
GG .....	60.332(a)(4) and 60.335(b)(10)(ii).
VV .....	60.482-1(c)(2) and 60.484.
WW .....	60.493(b)(2)(i)(A) and 60.496(a)(1).
XX .....	60.502(e)(6).
AAA .....	60.531, 60.533, 60.534, 60.535, 60.536(i)(2), 60.537, 60.538(e), and 60.539.
BBB .....	60.543(c)(2)(ii)(B).
DDD .....	60.562-2(c).
GGG .....	60.592(c).
III .....	60.613(e).
JJJ .....	60.623.
KKK .....	60.634.
NNN .....	60.663(f).
QQQ .....	60.694.
RRR .....	60.703(e).
SSS .....	60.711(a)(16), 60.713(b)(1)(i) and (ii), 60.713(b)(5)(i), 60.713(d), 60.715(a) and 60.716.
TTT .....	60.723(b)(1), 60.723(b)(2)(i)(C), 60.723(b)(2)(iv), 60.724(e) and 60.725(b).
VVV .....	60.743(a)(3)(v)(A) and (B), 60.743(e), 60.745(a) and 60.746.
WWW .....	60.754(a)(5).
CCCC .....	60.2030(c)(1) through (7).

## VI. Final Action

EPA is approving revisions to the North Dakota SIP that involve certain portions of the North Dakota Air Pollution Control Rules regarding general provisions, open burning, permitting, and fugitive emissions, as submitted by the Governor of North Dakota with a letter dated March 8, 2007. Specifically, EPA approves revisions to the following portions of the North Dakota Administrative Code (N.D.A.C.): Chapter 33-15-01, General Provisions, sections 33-15-01-04 and 33-15-01-05; Chapter 33-15-04, Open Burning Restrictions, sections 33-15-04-01 and 33-15-04-02; Chapter 33-15-14, Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate, subsections 33-15-14-02.13.c. and 33-15-14-02.13.o. (certain sections specific to permit to construct); and Chapter 33-15-17, Restriction of Fugitive Emissions, subsection 33-15-17-02. In addition, EPA approves revisions to North Dakota SIP Chapter 8, "Source Surveillance," also submitted by the Governor of North Dakota with his March 8, 2007 letter. Specifically EPA approves Section 8.3.1, "Continuous Opacity Monitoring for Fluid Bed Catalytic Cracking Units: Tesoro Refining and Marketing Co.,

Mandan Refinery." EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 28, 2008 without further notice unless EPA receives adverse comment by June 26, 2008. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## VII. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

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

Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 28, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference,

Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 7, 2008.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

■ 40 CFR part 52 is amended to read as follows:

**PART 52—[AMENDED]**

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

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

**Subpart JJ—North Dakota**

■ 2. Section 52.1820 is amended to read as follows:

- a. In the table in paragraph (c) by:
  - i. Revising the entries for "33-15-01-04;" "33-15-01-5;" "33-15-04-01;" "33-15-04-02;" "33-15-14-02;" and "33-15-17-02."
  - ii. Adding entries in numerical order for "33-15-04-02.1.b, 33-15-04-02.1.e, 33-15-04-02.1.g, and 33-15-04-02.2.k;" and "33-15-14-02.13.c and 33-15-14-02.13.o."
  - iii. Removing the entry for "33-15-14-02.5, 33-15-14-02.13.c, and 33-15-14-02.13.i(5)" and adding in its place a new entry for "33-15-14-02.5 and 33-15-14-02.13.i(5)."
- b. In paragraph (d) by revising the table.
- c. In the table in paragraph (e) by revising the entry "(1)" and by adding entry "(20)" in numerical order.

**§ 52.1820 Identification of plan.**

\* \* \* \* \*

(c) *EPA approved regulations.*

**STATE OF NORTH DAKOTA REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date and citation <sup>2</sup>	Explanations
33-15-01-04	Definitions	1/1/07	5/27/08, [Insert <b>Federal Register</b> page number where the document begins.]	
33-15-01-05	Abbreviations	1/1/07	5/27/08, [Insert <b>Federal Register</b> page number where the document begins.]	
33-15-04-01	Refuse Burning Restrictions	1/1/07	5/27/08, [Insert <b>Federal Register</b> page number where the document begins.]	

STATE OF NORTH DAKOTA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date and citation <sup>2</sup>	Explanations
33-15-04-02 .....	Permissible Open Burning .....	1/1/96	4/21/97, 62 FR 19224.	Excluding subsections 1.b, 1.e, 1.g, and 2.k which were subsequently revised and approved. See below.
33-15-04-02.1.b, 33-15-04-02.1.e, m, 33-15-04- 02.1.g, and 33- 15-04-02.2.k.	Permissible Open Burning .....	1/1/07	5/27/08, [Insert <b>Federal Register</b> page number where the docu- ment begins.].	
*	*	*	*	*
33-15-14-02 .....	Permit to Construct .....	3/1/94	8/21/95, 60 FR 43396.	Excluding subsections 12, 3.c, 13.b.1, 5, 13.c, 13.i(5), 13.o, and 19 (one sentence) which were subsequently revised and approved. See below. See additional interpretive materials cited in 57 FR 28619, 6/26/92, regarding the State's commitment to meet the requirements of EPA's "Guideline on Air Quality Models (Revised)."
*	*	*	*	*
33-15-14-02.5 and 33-15-14- 02.13.i(5).	Review of application—Standard for granting permits to construct and Ex- emptions.	3/1/03	8/8/05, 70 FR 45539.	
33-15-14-02.13.c and 33-15-14- 02.13.o.	Exemptions .....	1/1/07	5/27/08, [Insert <b>Federal Register</b> page number where the docu- ment begins.].	
*	*	*	*	*
33-15-17-02 .....	Restriction of fugitive particulate emis- sions.	1/1/07	5/27/08, [Insert <b>Federal Register</b> page number where the docu- ment begins.].	
*	*	*	*	*

<sup>2</sup>In order to determine the EPA effective date for a specific provision listed in this table, consult the FEDERAL REGISTER notice cited in this column for the particular provision.

(d) EPA-approved source-specific requirements.

Name of source	Nature of requirement	State effective date	EPA approval date and citation <sup>3</sup>	Explanations
—Leland Olds Station Units 1 & 2.	SIP Chapter 8, Section 8.3, Continuous Emission Monitoring Requirements for Existing Stationary Sources, including amendments to Permits to Operate and Department Order.	5/6/77	10/17/77, 42 FR 55471.	
—Milton R. Young Unit 1.				
—Heskett Station Units 1 & 2.				
—Stanton Station Unit 1.				
—American Crystal Sugar at Drayton.				
—Tesoro Mandan Refinery.	SIP Chapter 8, Section 8.3.1, Continuous Opacity Monitoring for Fluid Bed Catalytic Cracking Units: Tesoro Refining and Marketing Co., Mandan Refinery.	2/27/07	5/27/08, [Insert <b>Federal Register</b> page number where the document begins.].	

<sup>3</sup>In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

(e) EPA-approved nonregulatory provisions.

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/adopted date	EPA approval date and citation <sup>4</sup>	Explanations
(1) Implementation Plan for the Control of Air Pollution for the State of North Dakota.	Statewide .....	Submitted: 1/24/72 ..... Adopted: 1/24/72	5/31/72, 37 FR 10842 .....	Excluding subsequent revisions, as follows: Chapters 6, 11, and 12, and Sections 2.11, 3.2.1, 3.7, 5.2.1, 6.10, 6.11, 6.13, 8.3, and 8.3.1. Revisions to these non-regulatory provisions have subsequently been approved. See below.
		Clarification submitted: 6/14/73; 2/19/74; 6/26/74; 11/21/74; 4/23/75.	With all clarifications: 3/2/76, 41 FR 8956.	
Chapters: 1. Introduction. 2. Legal Authority. 3. Control Strategy. 4. Compliance Schedule. 5. Prevention of Air Pollution Emergency Episodes. 7. Review of New Sources and Modifications. 8. Source Surveillance. 9. Resources. 10. Inter-governmental Cooperation. 11. Rules and Regulations.				
With subsequent revisions to the chapters as follows:				
* (20) Revisions to SIP Chapter 8, Section 8.3.1.	* .....	* Submitted: 3/8/07 .....	* 5/27/08, [Insert <b>Federal Register</b> page number where the document begins].	*

<sup>4</sup> In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provisions.

■ 40 CFR part 60 is amended to read as follows:

**PART 60—[AMENDED]**

■ 3. The authority citation for part 60 continues to read as follows:

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

**Subpart A—General Provisions**

■ 4. In § 60.4, amend the table in paragraph (c) by revising the entries for subparts “L,” “M,” “N,” “Na,” “P,”

“Q,” “R,” “S,” and “BB” to read as follows:

**§ 60.4 Addresses.**

\* \* \* \* \*  
(c) \* \* \*



DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS [(NSPS) FOR REGION VIII]

Table with columns: Subpart, CO, MT, ND, SD, UT, WY. Rows include L—Secondary Lead Smelters, M—Secondary Brass and Bronze Production, N—Primary Emissions from Basic Oxygen Process Furnaces, P—Primary Copper Smelters, Q—Primary Zinc Smelters, R—Primary Lead Smelters, S—Primary Aluminum Reduction Plants, BB—Kraft Pulp Mills.

(\*) Indicates approval of State regulation.

\* \* \* \* \*

[FR Doc. E8-11479 Filed 5-23-08; 8:45 am] BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 00-168, 00-44; FCC 07-205]

Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission is correcting a final rule published in the Federal Register on March 13, 2008, 73 FR 13452. The document adopted a standardized form for the quarterly reporting of programming aired in response to issues facing a television station's community and a requirement that portions of each television station's public inspection file be placed on the Internet.

DATES: The rules in this document contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). After OMB approval is received, the Commission will publish a document in the Federal Register announcing the effective date of the rules.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Holly Saurer, Holly.Saurer@fcc.gov of the Media Bureau, Policy Division, (202) 418-2120.

SUPPLEMENTARY INFORMATION: In rule FR Doc. E8-5052 published on March 13, 2008, 73 FR 13452 make the following correction.

■ 1. On page 13463, in the second column, under § 73.3527, paragraph (e)(8)(i) and (ii) are added to read as follows:

§ 73.3527 [Corrected]

\* \* \* \* \*

(e) \* \* \*

(8) \* \* \*

(i) Issues/programs lists. For nonexempt noncommercial educational radio broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October-December, April 10 for the quarter January-March, etc.). The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

(ii) TV Standardized Public Interest Reporting Form. For noncommercial educational TV and Class A TV broadcast stations, every three months a completed Standardized Public Interest Reporting Form with regard to the station's efforts to determine the issues facing its community and the programming aired during the preceding three month period in response to those issues. The form for each calendar quarter is to be filed by the thirtieth day of the succeeding calendar quarter (e.g., January 30 for the quarter October-December, April 30 for the quarter January-March, etc.). The forms described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

\* \* \* \* \*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8-11407 Filed 5-23-08; 8:45 am]

BILLING CODE 6712-01-P