of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires were submitted on July 11, 2007 and adopted on February 6, 2007.

* * * * *

[FR Doc. 2014–08742 Filed 4–17–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2014–0049; FRL–9909–08–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; South Dakota; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving revisions to the South Dakota State Implementation Plan (SIP) submitted by the South Dakota Department of Environment and Natural Resources (DENR) to EPA on June 20, 2011. The SIP revisions address the permitting of sources of greenhouse gases (GHGs). Specifically, we are approving revisions to the State's Prevention of Significant Deterioration (PSD) program to incorporate the provisions of the federal PSD and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule). The SIP revisions incorporate by reference the federal Tailoring Rule's emission thresholds for determining which new stationary sources and modifications to existing stationary sources become subject to South Dakota's PSD permitting requirements for their GHG emissions. EPA is finalizing disapproval of a related provision that would rescind the State's Tailoring Rule revision in certain circumstances. EPA will take separate action on an amendment to the chapter Construction Permits for New Sources or Modifications in the June 20, 2011 submittal, regarding permits for minor sources. EPA is finalizing this action under section 110 and part C of the Clean Air Act (the Act or CAA).

DATES: This final rule is effective May 19, 2014.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R08–OAR–2014–0049. All documents in the docket are listed in the *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 *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., 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, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jody Ostendorf, Air Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202–1129, (303) 312–7814, *ostendorf.jody@epa.gov*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, the following definitions apply:

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

(ii) The initials *DENR* mean or refer to the South Dakota Department of Environment and Natural Resources.

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

(iv) The initials *GHG* mean or refer to Greenhouse Gas.

(v) The initials *PSD* mean or refer to Prevention of Significant Deterioration.

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

(vii) The words *State* or SD mean the State of South Dakota, unless the context indicates otherwise.

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I. Background for Our Final Action

The June 20, 2011 submittal incorporates by reference the provisions of the federal PSD and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule), that establish (1) that GHG is a regulated pollutant under South Dakota's PSD program, and (2) emission thresholds for determining which new stationary sources and modification projects become subject to South Dakota's PSD permitting requirements for their GHG emissions. The background for today's final rule, our rationale for disapproving the submitted rescission clause language, and EPA's national actions pertaining to GHGs is discussed in detail in our proposal (see 79 FR 8130, February 11, 2014). The comment period was open for 30 days and we received two adverse comment letters.

II. Response to Comments

We received adverse comments on our proposed action, specifically on our proposed disapproval of the rescission clause, from the South Dakota DENR. We received similar comments from Otter Tail Power Company. After considering the comments, EPA has decided to finalize our action as proposed. The comments and our responses follow.

Comment: DENR states that EPA's first proposed basis for disapproval was that the rescission clause would allow for revision of the SIP without the approval of the Administrator. EPA cited 40 CFR 51.105, which states that revisions of a plan, or portions thereof, will not be considered part of an applicable plan until such revisions have been approved by the Administrator in accordance with part 51.

DENR characterizes EPA as stating that the rescission clause will be a revision of the plan down the road that the Administrator has not had a chance to approve. DENR disagrees, stating that EPA has the chance to approve the rescission clause now. Otter Tail Power Company makes a similar argument, stating that 40 CFR 51.105 will not be violated in the event of a triggering action because the Administrator will have already approved the fact that the rules can be revised.

Response: EPA disagrees with this comment. We did not say the rescission clause as submitted is not before EPA for approval. Instead, we said that we were considering whether any *future* change to the SIP that occurs as a result of the automatic rescission clause would be consistent with EPA's interpretation of the effect of the triggering EPA or federal court action. In this case, even if EPA were to approve South Dakota's rescission clause now, the SIP would be modified without any EPA interpretation of the triggering federal court action. This violates 40 CFR 51.105.

Comment: DENR states that EPA approval of the rescission clause would not violate any public notice requirements. DENR notes that the public had notice and opportunity to comment on both the State's rulemaking

process and on EPA's SIP approval process; Otter Tail Power Company likewise states that there has already been adequate notice and comment. DENR states that the public is thus aware that if a court issues an order vacating or otherwise invalidating EPA's PSD GHG regulations, the South Dakota provisions will be rescinded. Otter Tail Power Company states that any further public notice is unnecessary.

Response: EPA disagrees with this comment. EPA is not stating that there was insufficient notice that the rescission clause says what it says. EPA is stating that *in the future* there would be inadequate notice to the public as to the effects of a court decision. DENR does not dispute this, because DENR does not indicate that there is any notification mechanism that would take place after the court decision. Likewise, Otter Tail Power Company does not explain how the public would be adequately notified.

Comment: DENR states that EPA's disapproval of the rescission clause would place an undue burden on the regulated community. Businesses moving to South Dakota or trying to expand would be put on hold until South Dakota could go through the rule process of removing the vacated provisions and submitting the revisions to EPA for approval. DENR and Otter Tail Power Company note that EPA has taken nearly three years to act on this submittal. Otter Tail Power Company states that this shows it would take a similar amount of time to remove the provisions from South Dakota's SIP if the PSD GHG provisions are stayed or vacated. DENR states a concern that without the rescission clause, there could be a scenario where South Dakota's SIP would have a requirement the State could not enforce because the underlying rule or law was no longer valid but a third party or EPA could attempt to enforce.

Response: EPA disagrees with this comment. First, a rescission clause that meets the requirements we described in our proposal notice can become effective relatively quickly. For example, we have approved a rescission clause that takes effect upon EPA's publication of a direct final rule in the **Federal Register** that a court has vacated GHG PSD permitting requirements. 77 FR 12484 (Mar. 1, 2012). This triggering event serves both the purpose of public notification and EPA interpretation of the court decision. In that direct final rule, EPA stated:

> In the event of a court decision * * * that triggers (or likely triggers) application of Tennessee's automatic rescission provisions, EPA intends to promptly describe the impact of the court decision * * * on the enforceability of its GHG permitting regulations.

77 FR 12486. Thus, a rescission clause can meet CAA requirements and still become effective relatively quickly after a court decision, without need for the full SIP revision process.

Second, South Dakota provides no evidence that any businesses would have to be put on hold. Most sources that are subject to PSD GHG requirements are subject to PSD permitting anyway due to their emissions of other pollutants. Furthermore, both states and EPA have issued many PSD permits that address GHG requirements, without any apparent impact on the economy.

Comment: DENR notes that during the state rulemaking process, EPA commented on South Dakota's rescission clause and did not object to it, only asking that South Dakota remove the word ''reconsider'' from the provision. DENR states that this estops EPA from objecting to the provision now.

Response: EPA disagrees with this comment. First, section 110(l) mandates that EPA cannot approve a SIP revision that interferes with any requirement of the CAA. Regardless of comments made during the state rulemaking, this requirement applies. As explained in our proposal notice and response to comments, EPA has determined in this action that the rescission clause does not comply with requirements in the CAA and in our regulations.

Second, nothing in the CAA requires EPA to participate in a state rulemaking process or to reach a final determination during that process on whether a state rule meets the requirements of the CAA. In addition, nothing in EPA's comment stated that the revised language would be approvable, that the comment was EPA's final determination, or that the submittal would not be subject to further EPA review. And even if the comment had made such a statement, it would not give rise to estoppel, as regardless of any such statement CAA section 110(l) does not permit EPA to approve a SIP revision that interferes with requirements of the CAA. *See, e.g. Utah Power & Light Co.* v. *United States,* 243 U.S. 389 (1917) (''[T]he United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.'').

Comment: DENR states that South Dakota is in litigation with EPA regarding EPA's Tailoring Rule. EPA's disapproval of the rescission clause is tantamount to requiring the State to waive or compromise its claims in that litigation by taking a contrary position in its State rules, and is no less than coercion.

Response: EPA strongly disagrees with this comment. It appears to EPA that our disapproval of the rescission clause has no legal consequences for the State, nor has DENR identified any. First, there are no legal consequences under the CAA. A rescission clause is not a required element of the plan, and disapproval of it does not obligate the State in any way to make a new SIP submittal and does not create any potential for sanctions.[1] The State's PSD program remains fully approved.

Second, there are no consequences that are relevant to the litigation. EPA is not requiring DENR to change anything in state law. Nor is EPA requiring the State somehow to affirm EPA's legal position in the cited litigation. The State is not required to make any response of any type to EPA's disapproval. There is nothing in EPA's disapproval of the State's rescission clause that can be characterized as coercion.

III. What final action is EPA taking?

EPA is approving in part, and disapproving in part, the June 20, 2011 submittal that addresses the permitting of sources of GHGs for incorporation into the South Dakota SIP. Specifically, EPA is approving revisions to Chapter 74:36:09 that incorporate the Tailoring Rule into the State's definitions and requirements for PSD. EPA is disapproving the provision that would rescind the State's Tailoring Rule revision in certain circumstances. EPA will take separate action on an amendment in the June 20, 2011 submittal to Chapter 74:36:20, Construction Permits for New Sources or Modifications, regarding permits for minor sources.

EPA is approving changes to Definitions, Section 74:36:01:08(2), which revises the major source definition so that it applies to any air pollutant ''subject to regulation as required by EPA,'' and Section 74:36:01:15(6), which adds the six GHGs designated by EPA as regulated air pollutants to the definition of regulated air pollutant. EPA is not taking action on the addition of ''(73) ''Subject to regulation'' as defined in 40 CFR 70.2 (July 1, 2009), as revised in publication 75 FR 31607 (June 3, 2010), in accordance with EPA requirements,''

[1] Even if this disapproval did create potential for sanctions—which it does not—that would not constitute coercion. *See e.g., Virginia* v. *Browner,* 80 F.3d 869 (4th Cir. 1996).

because it applies to the title V permitting program which is not part of the SIP.

IV. Statutory and Executive Orders Review

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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 action 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 June 17, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 24, 2014.

Shaun L. McGrath,

Regional Administrator, Region 8.

40 CFR part 52 is amended to read as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart QQ—South Dakota

■ 2. Section 52.2170 is amended in paragraph (c)(1):

■ a. By adding table entries for 74:36:01:08 and 74:36:01:15 in numerical order; and

■ b. By revising table entry for 74:36:09:02.

The amendments read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/subject	State effective date	EPA approval date and citation [1]	Explanations
	74:36:01 Definitions			
*	* *	*	* *	*
74:36:01:08	Major source defined	4/4/1999	4/18/2014 [Insert **Federal Register** page number where the document begins.].	
74:36:01:15	Regulated air pollutant defined	1/5/1995	4/18/2014 [Insert **Federal Register** page number where the document begins.].	
*	* *	*	* *	*

State citation	Title/subject	State effective date	EPA approval date and citation [1]	Explanations
74:36:09 Prevention of Significant Deterioration				
*	*	*	*	*
74:36:09:02	Prevention of significant deterioration	6/28/2010	4/18/2014 [Insert **Federal Register** page number where the document begins.].	
*	*	*	*	*

[1] 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.

* * * * *

[FR Doc. 2014–08615 Filed 4–17–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0191; FRL–9909–60–Region–3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revision for GP Big Island, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Virginia State Implementation Plan (SIP). The SIP revision consists of a revision to the operating permit for the control of visibility-impairing emissions from GP Big Island, LLC on a shutdown of an individual unit. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on June 17, 2014 without further notice, unless EPA receives adverse written comment by May 19, 2014. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0191 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0191, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2013–0191. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *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 *www.regulations.gov* or email. The *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 email comment directly to EPA without going through *www.regulations.gov,* your email 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.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 17, 2008, the Commonwealth of Virginia submitted a state operating permit for the control of visibility-impairing emissions from GP Big Island LLC located in Bedford County, Virginia. This permit consists of two power boilers (numbers 4 and 5). This permit was issued pursuant to Article 52 (9 VAC–5–40–7550 et seq.) of 9 VAC 5–40 (Existing Stationary Sources), and Article 5 (VAC 5–80–800 et seq.) of 9 VAC 5–80 (Permits for Stationary Sources) of the Commonwealth of Virginia Regulations for the Control and Abatement of Air Pollution.

II. Summary of SIP Revision

On December 21, 2012, the Commonwealth of Virginia submitted a SIP revision that consists of an amendment of the state operating permit for GP Big Island, LLC. The Commonwealth of Virginia and GP Big Island, LLC entered into a mutual determination of permanent shutdown of an individual unit consisting of the number 4 power boiler, in accordance with 9 VAC5–20–220 of Virginia's Regulations for the Control and Abatement of Air Pollution, regarding the shutdown of a stationary source. This SIP revision amends the state operating permit reflecting control of visibility-impairing pollutants in order