

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF:)
BASIN ELECTRICAL POWER COOPERATIVE)
DRY FORK STATION,) Docket No. 07-2801
AIR PERMIT CT-4631)

**RESPONDENT DEPARTMENT OF ENVIRONMENTAL QUALITY'S
MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Exhibit No. 4 - North Dakota Memorandum



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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APR 12 2002

Ref: 8P-AR

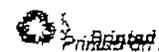
Terry L. O'Clair, Director
Division of Air Quality
Environmental Health Section
North Dakota Department of Health
P.O. Box 5520
Bismarck, ND 58506-5520

Dear Terry:

EPA has reviewed the draft North Dakota revisions to the State Implementation Plan (SIP) and Air Pollution Control Rules, as submitted by you with a letter dated February 14, 2002. Our comments for the April 19, 2002 public hearing are detailed in the attachment to this letter. In particular, please note our comment #17 regarding approvability concerns with the proposed addition of Class I significant impact levels to Chapter 33-15-15, Prevention of Significant Deterioration of Air Quality. As a reminder, a written response to EPA's comments, and all other comments received, is required to meet the completeness criteria outlined in 40 CFR Part 51 Appendix V and must be included in the formal Governor's submittal of these revisions to the SIP once they are finalized.

As you are aware, there are several proposed revisions that are not appropriate for incorporation into the North Dakota SIP for various reasons. These reasons are listed below along with the proposed North Dakota provisions that fall into each category.

1. Programs for which EPA should delegate authority to the State: Chapter 33-15-12 Standards for Performance for New Stationary Sources (New Source Performance Standards - NSPS) and any related emission guideline plans, Chapter 33-15-13 Emission Standards for Hazardous Air Pollutants (40 CFR Part 61 National Emission Standards for Hazardous Air Pollutants - Part 61 NESHAPs), and Chapter 33-15-22 Emission Standards for Hazardous Air Pollutants for Source Categories (40 CFR Part 63 National Emission Standards for Hazardous Air Pollutants - Part 63 NESHAPs);
2. Programs which EPA has already approved at the State level: Chapter 33-15-14-06 Title V Permit to Operate (8/16/99) and 33-15-21 Acid Rain Program (10/11/95); and
3. Rules that are not generally related to attainment or maintenance of the National Ambient Air Quality Standards (NAAQS): Chapter 33-15-24 Standards for Lead Based Paint



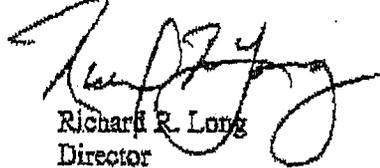
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Activities.

Any necessary follow-up on the above proposed revisions will be handled separately, with the exception of our comments on Chapters 33-15-12 Standards of Performance for New Stationary Sources and 33-15-14-06 Title V Permit to Operate, which are included below.

We appreciate the opportunity to provide comments for your public hearing. If you have any questions on EPA's comments, please call me at 303-312-6005, or have your staff call Amy Platt at 303-312-6449.

Sincerely,



Richard R. Long
Director
Air and Radiation Program

Enclosure

cc: Tom Bachman, ND Department of Health
Chris Shaver, NPS
Sandra Silva, USFWS



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bcc: Kathleen Paser, SP-AR
Megan Williams, SP-AR
Sara Laumann, SRC



ATTACHMENT

COMMENTS FOR NORTH DAKOTA'S APRIL 19, 2002 PUBLIC HEARING

Chapter 33-15-01, General Provisions

1. Although 33-15-01-07, Variances, is not the subject of the current revisions, please be advised that this provision should be removed from the Federally approved SIP. Section 110(i) of the Federal Clean Air Act, as amended, prohibits the suspension of any requirement of an applicable SIP from being taken with respect to a stationary source by a State or the Administrator of EPA, except by SIP revision under section 110(a) (and a few other exceptions). When you make your formal Governor's submittal of the final revisions, please request that EPA remove this provision from the SIP.
2. In addition to the federally enforceable monitoring or testing methods in 40 CFR parts 50, 51, 60, 61, and 75 listed as presumptively credible evidence in 33-15-01-17.2.b(1), North Dakota should add federally enforceable monitoring or testing methods from 40 CFR part 63. However, since EPA does not approve the "presumptively credible evidence" language in any newly approved credible evidence rules, we suggest that North Dakota instead revise the language in Chapter 33-15-01-17.2.a and b. to simplify it and make it more consistent with other states by replacing the current language with the following: "For the purpose of submitting compliance certifications or establishing whether or not any person has violated or is in violation of any standard in the North Dakota state implementation plan, nothing in the North Dakota state implementation plan shall preclude the use, including the exclusive use, of any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed."

Chapter 33-15-05, Emissions of Particulate Matter Restricted

3. It is not clear whether the exemption language proposed in 33-15-05-02.1.c. would result in an increase in emissions. Please define "gaseous fuels" and "other gaseous fuels." To be approvable, the State will need to demonstrate that this proposed provision will not interfere with the NAAQS, Prevention of Significant Deterioration (PSD) increments, or any other Clean Air Act requirements.
4. The proposed language in 33-15-05-03.3.1. removes standards for salvage incinerators. Please explain what the State considers a "salvage incinerator" so we can determine whether removing standards for them is acceptable. To be approvable, the State needs to demonstrate how it will ensure that these facilities are not interfering with the NAAQS, PSD increments, or any other Clean Air Act requirements.
5. It is not clear why the proposed language in 33-15-05-03.3.4.c. to change the temperature requirement from 1600 to 1400 degrees Fahrenheit in a secondary chamber of a



crematorium is acceptable. EPA recommends minimum secondary chamber temperatures of 1600-1800 °F based on design types as follows: 1600 °F for units 500 lb/hr and under, in-line and retort types; 1800 °F for units greater than 500 lb/hr, multi-chamber type (see page 47 of the enclosed Regulatory Alternatives Paper, prepared by The Incinerator Work Group of EPA's Industrial Combustion Coordinated Rulemaking (ICCR) Coordinating Committee, September 8, 1998). To be approvable, the State needs to demonstrate that this proposed change will not interfere with the NAAQS, PSD increments, or any other Clean Air Act requirements.

6. The proposed last sentence in 33-15-05-03.4.e., regarding deviations from charging procedures for crematoriums, should be revised to read ".....approved by the department and EPA."
7. The proposed first sentence in 33-15-05-04.1., regarding alternative methods of measurement, should be revised to read ".....as approved by the department and EPA...." In addition, we note that 33-15-05-04, Methods of measurement, outlines methods used to determine compliance with sections 33-15-05-01 and 33-15-05-02. What will be the method for determining compliance with sections 33-15-05-03.2. and 33-15-05-03.3?

Chapter 33-15-06, Emissions of Sulfur Compounds Restricted

8. We have several concerns with the proposed language in 33-15-06-01.1.e. This subsection provides that Chapter 33-15-06, Emissions of Sulfur Compounds Restricted, does not apply to installations that burn pipeline quality natural gas or commercial-grade propane alone or in combination with each other.
 - a. Before we could approve this proposed provision, the State will need to submit a demonstration showing that installations that burn pipeline quality natural gas or commercial-grade propane could not exceed the existing SO₂ emission limits in the SIP.
 - b. We are assuming that you are proposing to add this provision because sources that burn pipeline quality natural gas or commercial-grade propane usually have low SO₂ emissions. However, we are concerned that if a large number of sources burning pipeline quality natural gas or commercial-grade propane are located near each other there could be a problem with meeting the NAAQS or PSD increments. Therefore, before we could approve this proposed provision, additional language should be added that indicates that the department shall impose additional requirements on installations burning pipeline quality natural gas or commercial-grade propane if it is determined that these installations may cause or contribute to exceedances of the NAAQS or PSD increments.
 - c. Elsewhere the State has included a definition for pipeline quality natural gas. However, a definition for commercial-grade propane has not been included. Before we could approve this proposed provision a definition for commercial-grade propane needs to be adopted. We are assuming that the department intends for commercial-grade propane to be roughly equivalent to, in terms of sulfur content and pounds of



sulfur/mmbtu, pipeline quality natural gas. If that is not the case, we may have additional concerns with this proposed provision.

d. We are assuming that this proposed provision does not obviate installations from meeting other requirements under the State's regulations, e.g., permitting requirements. If this assumption is incorrect, we may have additional concerns with this proposed provision.

e. Finally, the proposed provision indicates that installations that burn pipeline quality natural gas or commercial-grade propane are not subject to the chapter. However, the chapter contains, among other things, methods of measurement and continuous emission monitoring requirements. We do not believe that installations burning pipeline quality natural gas or commercial-grade propane should be excluded from meeting such requirements, as required in those subsections.

9. The language in the opening paragraph of 33-15-06-03 should be revised to indicate that replacement or applicable alternative methods to NSPS reference methods can be used as "approved by the department and EPA."
10. Although the State is not revising 33-15-06-03.5.a. at this time, we have the following comment. This rule provides equations to determine the pollutant emission rate if Method 6 is used. We question why this equation is provided. The purpose of Method 6 is to determine SO₂ concentration from stationary sources. It is not intended to determine a pollutant emission rate. The equations provided in 33-15-06-03.5.a. are the same equations provided in Method 20 - a method to determine, among other things, SO₂ emissions from gas turbines. We do not understand why you would use a gas turbine equation for potentially any source that calculates an SO₂ concentration with Method 6.
11. If you intend to keep the equations in 33-15-06-03.5.a., then we would make the following comment. On page 6-4, the state is proposing to replace the table in 33-15-06-03.5.a(5) with F Factors from Method 19. For the most part, the Fc factors in Method 19 are lower than in the State's current table. Using method 19 Fc factors will result in lower pollutant emission rates being calculated. Since this appears to be a SIP relaxation, the State will need to demonstrate that there will be no adverse impacts to the NAAQS, PSD increments, or any other Clean Air Act requirement. As part of your demonstration, please explain why the higher F factors were used originally. Also, the equations in 33-15-06-03.5.a. indicate that a "Fc" and a "F" factor are needed to calculate a pollutant emissions rate. The F factors in Method 19 are "Fd," "Fw" and "Fc." There is no plain "F" factor. Either the equation in 33-15-06-03.5.a. will need to be revised to replace "F" with "Fd" or "Fw" or the state will need to leave its plain "F" factor found in the current table in 33-15-06-03.5.a(5).

Chapter 33-15-12, Standards of Performance for New Stationary Sources

12. The emission guidelines at 40 CFR, part 60, subpart DDDD - Emission guidelines and



compliance times for commercial and industrial solid waste incinerator (CISWI) units that commenced construction on or before November 30, 1999, require that nine items be included in the State's CISWI Plan.

- 1) Inventory of affected CISWI units, including those that have ceased operation but have not been dismantled.
- 2) Inventory of emissions from affected CISWI units in the State.
- 3) Compliance Schedules for each affected CISWI unit.
- 4) Emission limitation, operator training and qualification requirements, a waste management plan, and operating limits for affected CISWI units that are at least as protective as the emission guidelines contained in Subpart DDDD.
- 5) Performance testing, recordkeeping, and reporting requirements.
- 6) Certification that the hearing on the State plan was held, a list of witnesses and their organizational affiliation, if any, appearing at the hearing, and a brief written summary of each presentation or written summary of submission.
- 7) Provision for State progress reports to EPA.
- 8) Identification of enforceable State mechanisms that you selected for implementing the emission guidelines of Subpart DDDD.
- 9) Demonstration of the State's legal authority to carry out the sections 111(d) and 129 State plan.

The State's proposal to incorporate by reference (IBR) the model rule will meet the requirements of items 3, 4, and 5 listed above. In addition to the proposed rule changes to IBR the model CISWI rule, the draft CISWI Plan meets the requirements of items 1, 2, and 8 of the list above.

However, before we can consider the draft plan complete and determine its adequacy, items 6, 7, and 9 from the above list need to be included, as well as a letter from the Attorney General stating that the State will be able to carry out the specific intent of the emission guideline using the State rule as designed with the IBR as indicated in its current version of the proposed rule.

Chapter 33-15-14, Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate

13. Section 33-15-14-02 - Permit to Construct: Please note that we will not be acting on the changes to the State's public participation requirements, 33-14-14-02.6, that were originally submitted to EPA in 1997 (and that also appear in this version of the State's rules) until EPA finalizes revisions to the Federal minor New Source Review (NSR) public participation requirements.
14. Section 33-15-14-02.19 and 33-15-14-03.16 - Amendment of Permits: In light of the State's proposed addition of Class I significant impact levels (33-15-15-01.4.f(3)), we would like an explanation as to why this proposed revision - to change the phrase "have a significant impact" to "be a major modification" - would not be considered a relaxation of



the existing SIP. Since a "major modification" in 33-15-15-01.1.hh(3) is defined as "any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten kilometers [6.21 miles] of a class I area, and have an impact on such area equal to or greater than one $\mu\text{g}/\text{m}^3$ (twenty-four-hour average)" [emphasis added], and since the proposed Class I significant impact levels in 33-15-15-01.4.f(3) are more inclusive than the one $\mu\text{g}/\text{m}^3$ (24-hr average) specified in the definition of "major modification," we believe this may be a relaxation of the State's rules and would like clarification from the State on this point. If this change does result in a relaxation of the State's rules, we will need a demonstration from the State that these changes will not interfere with the NAAQS, PSD increments, or any other Clean Air Act requirements. Please note our concerns with the State's proposed Class I significant impact levels, discussed under comment #18 below.

15. Section 33-15-14-06 Title V Permit to Operate: Although these proposed revisions will not be incorporated into the SIP in their final form, we did want to note that they are acceptable. Please note one typographical error in 33-15-14-06.1.0 (2)(aa). Only source categories under section 111 or 112 of the Federal Clean Air Act that were regulated as of August 7, 1980 must count fugitive emissions when determining whether the source is major (not August 1, 1980).

Chapter 33-15-15, Prevention of Significant Deterioration of Air Quality

16. In the summary of proposed changes, the State indicates that it is revising subsection 33-15-15-01.4.f.(1) to incorporate by reference 40 CFR Part 51, Appendix W, Guideline on Air Quality Models. It is not clear how the proposed change accomplishes this. We would like some clarification on the result of this change, which eliminates reference to the "Guidelines on Air Quality Models" and to the "North Dakota Guideline for Air Quality Modeling Analyses" and which eliminates the phrase "incorporated by reference" (i.e., how does the State interpret this proposed version differently than what is currently approved into the SIP?).

17. In 33-15-15-01.4.f.(3), the State is proposing to add Class I significant impact levels that define ambient concentrations above which a source will be considered to "cause or contribute to air pollution in a class I area, have an impact on a class I area, or have a significant impact on a class I area."

We have recently consulted with our Headquarters offices and it is EPA's position (as we stated in an August 30, 2001 letter to the North Dakota Department of Health) that it is not appropriate to establish Class I significance levels *when an increment violation already exists*. We believe any impact (not just one that is "significant") on a receptor in a Class I area that shows a violation of the PSD increment would be considered to contribute to that violation. Furthermore, we believe that, even if some of the impacts are relatively small they are still contributing to an existing problem.

Under current EPA policy, the PSD Class II significant impact levels are used primarily



as a threshold in new source permitting to determine the scope of the modeling analysis. For Class I areas, no PSD significant impact levels have ever been codified by EPA for use in the permitting process. Given the higher level of air quality protection that Congress deemed necessary in Class I airsheds, EPA believes that it would be ill-advised to extend the use of Class I significant impact levels in determining if a source causes or contributes to air pollution in a Class I area, has an impact on a Class I area, or has a significant impact on a Class I area where violations of the increment are already occurring. In the 1980 preamble to our PSD regulations, we indicate that:

Each proposed major construction project subject to PSD must first assess the existing air quality for each regulated air pollutant that it emits in the affected area. This analysis requirement does not apply to pollutants for which the new emissions proposed by the applicant would cause insignificant ambient impacts. Today's PSD regulations define pollutant-specific impacts that are typically considered inconsequential and that can be exempted from analysis, *unless existing air quality is poor or adverse impacts to a Class I area are in question.* [emphasis added] (45 FR 52678)

Where there is a Class I increment violation, significant deterioration has occurred, which is what the CAA intended the PSD program to prevent. The use of significant impact levels would enable new sources to avoid doing a cumulative impact analysis to determine the source's potential impact on the increment levels. EPA believes this should not be allowed, until a state submits a SIP revision to correct any increment violations.

Furthermore, we believe adding these Class I significant impact levels is a relaxation of the existing SIP, interferes with Clean Air Act requirements and is inconsistent with section 110(l) of the Clean Air Act. Unless the State adds a provision to ensure that the proposed Class I significant impact levels would not be used where violations of the increment are already occurring, we believe we would likely not approve such a revision.



