

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC 89-200240(a); FRL-7395-5]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Miscellaneous Revisions to Regulations Within the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On April 13, 1999, the North Carolina Department of Environment and Natural Resources, submitted revisions to the North Carolina State Implementation Plan (SIP). These revisions include amending regulations relating to ozone, particulate matter, and other miscellaneous rules within the Air Pollution Control Requirements subchapter. In addition, North Carolina has also submitted rule revisions to the General Provisions, Construction and Operations Permits and Exclusionary Rules sections of their Air Quality Permits Subchapter. The purpose of these revisions is to make the revised regulations consistent with the requirements of the Clean Air Act as amended in 1990. The EPA is approving these revisions.

DATES: This direct final rule is effective December 23, 2002 without further notice, unless EPA receives adverse comment by November 21, 2002. If adverse comment is received, EPA 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: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency,
Region 4, Air Planning Branch, 61
Forsyth Street, SW., Atlanta, Georgia
30303-8960. Randy Terry, 404/562-
9032.

North Carolina Department of
Environment and Natural Resources,
512 North Salisbury Street, Raleigh,
North Carolina 27604.

FOR FURTHER INFORMATION CONTACT:

Randy B. Terry at 404/562-9032, or by electronic mail at terry.randy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On April 13, 1999, the North Carolina Department of Environment and Natural Resources, submitted revisions to the North Carolina SIP. These revisions include the amending of regulations relating to ozone, particulate matter, and other miscellaneous rules within the Air Pollution Control Requirements subchapter. In addition North Carolina has also submitted rule revisions to the General Provisions, Construction and Operations Permits and Exclusionary Rules sections of their Air Quality Permits Subchapter. A detailed analysis of each of the major revisions submitted is listed below.

II. Analysis of North Carolina's Submittal

Subchapter 2D

.0405 Ozone, and .0410 PM 2.5 Particulate Matter

These rules were amended to adopt the federal revisions to the National Ambient Air Quality Standards (NAAQS) for ozone and particulate matter as state air quality standards.

.0503 Particulates From Fuel Burning Indirect Heat Exchangers, .0504 Particulates From Wood Burning Indirect Heat Exchangers

These rules were updated to add new definitions for "functionally dependant," "indirect heat exchanger," and "plant site."

Subchapter 2Q

.0102 Activities Exempted From Permit Requirements

This rule has been amended to clarify permit exemptions for municipal solid waste landfills that are not required to have a title V permit and to add a paragraph for exemptions when there is no applicable requirement under title V.

.0103 Definitions

This rule has been amended to add a definition for "Sawmill."

.0107 Confidential Information

This rule was amended to revise the deadline in which the Director is required to respond to a request to treat information as confidential and to add language that clarifies that such information is to be treated as confidential until the Director decides that the information is not confidential.

.0300 Construction and Operating Permits

This section was revised, by adding headings, to each subparagraph under rule .0304 Applications to clarify the

process of applications. These headings cover items such as obtaining and filing applications, information to accompany application, when to file applications for permit renewal, ownership or name change and requesting additional information. In addition, rule .0511 Synthetic Minor Facilities has been moved and is now listed as rule .0315.

.0800 Exclusionary Rules

This section was revised to add language clarifying that coverage under this section is voluntary and explains the procedure for an owner or operator to request that their facility not be covered by this section. Additionally, a new rule was added that applies to facilities whose only sources requiring a permit are one or more peak shaving generators and their associated fuel storage tanks.

III. Final Action

EPA is approving the aforementioned changes to the SIP because the revisions are consistent with Clean Air Act and EPA regulatory requirements. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective December 23, 2002 without further notice unless the Agency receives adverse comments by November 21, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 23, 2002 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

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 (Public Law 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 is not economically significant.

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 December 23,

2002. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 1, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart II—North Carolina

2. Section 52.1770(c), Table 1 is amended to read as follows:

- a. Revise column heading "Comments" to read "Explanations."
- b. Under Subchapter 2D by revising entries for ".0405," ".0503," ".0504," and adding in numerical order a new entry for ".0410."
- c. Under Subchapter 2Q by revising entries ".0102," ".0103," ".0107," ".0304," ".0306," ".0309," ".0801," ".0803," and ".0808" and adding in numerical order a new entry for ".0314" and ".0315."

§ 52.1770 Identification of plan.

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(c) * * *

TABLE 1.—EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Subchapter 2D Air Pollution Control Requirements				
*	*	*	*	*
Section .0400 Ambient Air Quality Standards				
*	*	*	*	*
Sect. .0405	Ozone	05/01/99	10/22/02, 2002, [FR cite].	

TABLE 1.—EPA APPROVED NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
* Sect. .0410	* PM 2.5 Particulate Matter	* 05/01/99	* 10/22/02, [FR cite].	*
Section .0500 Emission Control Standards				
* Sect. .0503	* Particulates From Fuel Burning Indirect Heat Exchangers.	* 05/01/99	* 10/22/02, [FR cite].	*
* Sect. .0504	* Particulates From Wood Burning Indirect Heat Exchangers.	* 05/01/99	* 10/22/02, [FR cite].	*
* 	* 	* 	* 	*
Subchapter 3Q—Air Quality Permits Section .0100 General Provisions				
* Sect. .0102	* Activities Exempted From Permit Requirements.	* 05/01/99	* 10/22/02, [FR cite].	*
* Sect. .0103	* Definitions	* 05/01/99	* 10/22/02, [FR cite].	*
* Sect. .0107	* Confidential Information	* 05/01/99	* 10/22/02, [FR cite].	*
* 	* 	* 	* 	*
Section .0300 Construction and Operation Permits				
* Sect. .0304	* Applications	* 07/01/99	* 10/22/02, [FR cite].	*
* Sect. .0306	* Permits Requiring Public Participation	* 07/01/99	* 10/22/02, [FR cite].	*
* Sect. .0309	* Termination, Modification and Revocation of Permits.	* 07/01/99	* 10/22/02, [FR cite].	*
* Sect. .0314	* General Permit Requirements	* 07/01/99	* 10/22/02, [FR cite].	*
* Sect. .0315	* Synthetic Minor Facilities	* 07/01/99	* 10/22/02, [FR cite].	*
* 	* 	* 	* 	*
Section .0800 Exclusionary Rules				
* Sect. .0801	* Purpose and Scope	* 05/01/99	* 10/22/02, [FR cite].	*
* Sect. .0803	* Coating, Solvent Cleaning, Graphic Arts Operations.	* 05/01/99	* 10/22/02, [FR cite].	*
* Sect. .0808	* Peak Shaving Generators	* 07/01/99	* 10/22/02, [FR cite].	*

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