



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2009-0140; FRL- 9835-7]

Approval and Promulgation of Implementation Plans; North Carolina; Control Techniques Guidelines and Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 1, 2013, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), submitted to EPA a state implementation plan (SIP) revision to satisfy North Carolina's commitment associated with the conditional approval of its reasonably available control technology (RACT) requirements for volatile organic compound (VOC) sources located in the North Carolina portion of the Charlotte – Gastonia – Rock Hill, North Carolina – South Carolina 1997 8-hour ozone nonattainment area (hereafter referred to as the “bi-state Charlotte Area”). The NC DENR May 1, 2013, SIP revision also includes additional changes to North Carolina's RACT rules. EPA is taking final action to approve a number of these SIP changes to the State's RACT rules and to convert the existing conditional approval of VOC RACT provisions in the North Carolina SIP to a full approval under the Clean Air Act (CAA or Act). EPA has evaluated the changes to North Carolina's SIP, and has made the determination that those being approved through this action are consistent with statutory and regulatory requirements and EPA guidance.

EFFECTIVE DATE: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2009-0140. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information 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 through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9029. Ms. Spann can also be reached via electronic mail at spann.jane@epa.gov.

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I. Background

On April 30, 2004, EPA designated the bi-state Charlotte Area as a moderate nonattainment area with respect to the 1997 8-hour ozone NAAQS.¹ *See* 69 FR 23858. The bi-state Charlotte Area for the 1997 8-hour ozone NAAQS includes six full counties and one partial county in North Carolina; and one partial county in South Carolina. The North Carolina portion of the bi-state Charlotte Area consists of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell County which includes Davidson and Coddle Creek Townships.² The South Carolina portion of the bi-state Charlotte Area consists of the portion of York County that falls within the Rock Hill-Fort Mill Area Transportation Study Metropolitan Planning Organization Area. As a result of this moderate nonattainment designation, North Carolina and South Carolina were required to amend their SIPs for their respective portions of the bi-state

¹ Portions of the bi-state Charlotte Area were previously designated as a moderate nonattainment area for the 1-hour ozone NAAQS. The Area was subsequently redesignated to attainment for the 1-hour ozone NAAQS, and a maintenance plan was approved into the North Carolina SIP. The original Charlotte–Gastonia, North Carolina 1-hour moderate ozone nonattainment area consisted of Mecklenburg and Gaston counties in North Carolina.

² Effective July 20, 2012, EPA designated one full county and six partial counties in the bi-state Charlotte area as a marginal nonattainment area for the 2008 8-hour ozone NAAQS. Today's final rulemaking regarding RACT is not related to requirements for the 2008 8-hour ozone NAAQS.

Charlotte Area to satisfy the requirements of section 182 of the CAA. Today's action specifically addresses the North Carolina portion of the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS. EPA approved the RACT requirements for the South Carolina portion of the bi-state Charlotte Area on November 28, 2011. *See* 76 FR 72844.

Section 172(c)(1) of the CAA requires SIPs to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable. RACT, a subset of RACM, relates specifically to stationary point sources. Section 182(b)(2) of the CAA requires states to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. The three parts of the section 182(b)(2) RACT requirements are: (1) RACT for sources covered by an existing control techniques guideline (CTG) (i.e., a CTG issued prior to enactment of the 1990 amendments to the CAA); (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG (i.e., non-CTG sources). Pursuant to 40 CFR 51.165, a major source for a moderate ozone area is a source that emits 100 tons per year (tpy) or more of VOC or NO_x.^{3,4} If no major sources of VOC or NO_x emissions (each pollutant should be considered separately) in a particular source category exist in an applicable nonattainment area, a state may submit a negative declaration for that category.

³ The emission threshold is based on an area's nonattainment designation classification. Section 182 of the CAA and 40 CFR 51.912 (b) define "major source" for ozone nonattainment areas to include sources which emit or which have the potential to emit 100 tpy or more of VOC or NO_x (ozone precursors) in areas classified as "marginal" or "moderate," 50 tons per year (tpy) or more of these ozone precursors in areas classified as "serious," 25 tpy or more of these ozone precursors in areas classified as "severe," and 10 tpy or more of these ozone precursors in areas classified as "extreme." The bi-state Charlotte Area for the 1997 8-hour ozone NAAQS is a moderate nonattainment area.

⁴ Section 182(b)(2) also requires that all CTG source category sources, including those with less than 100 tpy emissions, meet RACT. CTG sources are addressed later in this document.

On March 13, 2013, EPA proposed to approve in part, and conditionally approve in part, numerous SIP revisions provided by NC DENR to address NOx and VOC RACT requirements. *See* 78 FR 15895. No comments were received on EPA's March 13, 2013, proposed rulemaking and on May 9, 2013, EPA took final action to approve, in part, and conditionally approve in part, North Carolina SIP revisions submitted on October 14, 2004, April 6, 2007, June 15, 2007, January 31, 2008, November 19, 2008, September 18, 2009, February 3, 2010, April 6, 2010, and November 9, 2010, to address NOx RACT, VOC RACT and CTG requirements.

NC DENR submitted a SIP revision on May 1, 2013, to address deficiencies with the State's VOC RACT rules as identified in the EPA May 9, 2013, conditional approval of North Carolina VOC RACT rules 15A NCAC 02D.0902 (hereafter ".0902"), 15A NCAC 02D.0909 (hereafter ".0909"), 15A NCAC 02D.0951 (hereafter ".0951"), 15A NCAC 02D.0961 (hereafter ".0961") and 15A NCAC 02D.0962 (hereafter ".0962").⁵ North Carolina's May 1, 2013, SIP revision also included changes to rule 15A NCAC 02D.0903 (hereafter ".0903").⁶ On June 7, 2013, EPA proposed to approve portions of North Carolina's May 1, 2013, SIP revision which included changes to the State's RACT rules to correct deficiencies and add new changes. *See* 78 FR 34306. EPA did not receive any comments, adverse or otherwise, on the June 7, 2013, proposed rulemaking related to North Carolina's May 1, 2013, SIP revision.

For more information regarding the RACT requirements, including requirements and schedules for sources covered by CTGs, see EPA's March 13, 2013, proposed rulemaking (78

⁵ Although published on May 9, 2013, EPA's conditional approval final action was signed on April 29, 2013, prior to the Agency's receipt of the May 1, 2013, North Carolina submission to address the State's conditional approval commitments.

⁶ A change to rule 15A NCAC 02Q.0102 (hereafter ".0102") is also included in the May 1, 2013, SIP revision. In today's rulemaking, EPA is not taking action on North Carolina's changes to rule .0102. EPA will contemplate action on these changes in a separate action.

FR 15895), the May 9, 2013, final rulemaking (78 FR 27065) and the June 7, 2013, proposed rulemaking related to this final action at 78 FR 34306.

II. This Action

EPA is approving portions of the May 1, 2013, SIP revision submitted to EPA by the State of North Carolina, through NC DENR, to address the NO_x RACT requirements for the North Carolina portion of the bi-state Charlotte Area. Specifically, EPA is approving the entirety of the May 1, 2013, SIP revision with the exception of the revisions related to section .0102. Because EPA is approving these revisions to the State's RACT rules, the Agency is also, through this action, converting the existing conditional approval of VOC RACT provisions in the North Carolina SIP to a full approval under the CAA. These SIP revisions, along with revisions approved on May 9, 2013, (78 FR 27065) establish the RACT requirements for the major sources located in the North Carolina portion of the bi-state Charlotte Area. In a separate rulemaking, EPA has already taken action on RACT and CTG requirements for the South Carolina portion of the bi-state Charlotte Area.

III. Final Action

EPA is taking final action to approve portions of the May 1, 2013, SIP revision to the State's RACT rules and converting the existing conditional approval of VOC RACT provisions in the North Carolina SIP to a full approval under the CAA. Together, this SIP revision, and those referenced in the May 9, 2013, (78 FR 27065) action establish the RACT requirements for the major sources located in the North Carolina portion of the bi-state Charlotte Area. EPA is

taking final action on the May 1, 2013, SIP revision because it is consistent with the CAA and requirements related to VOC and NOx RACT.

IV. Statutory and Executive Order Reviews

Under the CAA, 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 CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does 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 (Public Law 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 CAA; 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

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 section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 12, 2013.

A. Stanley Meiburg,

Acting Regional Administrator,

Region 4.

40 CFR part 52 is amended 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 II – North Carolina

2. Section 52.1770(c) Table 1, is amended under Subchapter 2D at section .0900 by revising the entries for “Sect .0902,” “Sect .0903,” “Sect .0951,” “Sect .0961,” “Sect .0962,” to read as follows:

§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	Explanation
Subchapter 2D Air Pollution Control Requirements				
**	**	*	*	*
Section .0900 Volatile Organic Compounds				
**	**	*	*	*
Sect .0902	Applicability	5/1/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	This approval does not include the start-up shutdown language as described in Section II.A.a. of

				EPA's 3/13/2013 proposed rule (78 FR 15895)
Sect .0903	Recordkeeping: Reporting, Monitoring	5/1/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
**	**	*	*	*
Sect .0909	Compliance Schedules for Sources in Nonattainment Areas	5/1/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
**	**	*	*	*
Sect .0951	RACT for Sources of Volatile Organic Compounds	5/1/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
**	**	*	*	*
Sect .0961	Offset Lithographic Printing and Letterpress Printing	5/1/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
Sect .0962	Industrial Cleaning Solvents	5/1/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
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[FR Doc. 2013-17833 Filed 07/24/2013 at 8:45 am; Publication Date: 07/25/2013]