



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2007-0085; FRL- 9965-02-Region 4]

Air Plan Approval; NC; Open Burning and Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve several revisions to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina through the North Carolina Department of Environmental Quality (formerly the North Carolina Department of Environment and Natural Resources (NCDENR)), Division of Air Quality (DAQ), on October 14, 2004, March 24, 2006, and January 31, 2008. The revisions include changes to several regulations and the addition of a new section to the Exclusionary Rules of the North Carolina SIP. These revisions are part of North Carolina's strategy to meet and maintain the national ambient air quality standards (NAAQS). This action is being taken pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

DATES: This direct final rule is effective [Insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse comment by [Insert date 30 days after publication in the Federal Register]. 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: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2007-0085 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman or Nacosta C. Ward, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Lakeman can be reached via telephone at (404) 562-9043 or via electronic mail at lakeman.sean@epa.gov. Ms. Ward can be reached via telephone at (404) 562-9140, or via electronic mail at ward.nacosta@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Analysis of the State Submittals

On October 14, 2004, March 24, 2006, and January 31, 2008, the State of North Carolina, through NCDENR, submitted revisions to the North Carolina SIP. These submissions pertain to revisions adopted by the North Carolina Environmental Management Commission (EMC) on March 11, 2004, November 10, 2005, and July 11, 2007, respectively. Of the revisions adopted, EPA is taking direct final action on the changes to the following regulations: 15A NCAC Subchapter 2D – Air Pollution Control Requirements, Section .0101, *Definitions*; Section .0103, *Copies of Referenced Federal Regulations*; Section .1901 *Purpose, Scope, and Impermissible Open Burning Section*; .1902, *Definitions*; Section .1903, *Permissible Open Burning Without An Air Quality Permit*; Section .2001, *Purpose, Scope, and Applicability*; and 15A NCAC Subchapter 2Q – Air Quality Permits; Section .0103, *Definitions*; Section .0105, *Copies of Referenced Documents*; Section .0304, *Applications*; Section .0305, *Application Submittal Content*; Section .0806, *Cotton Gins*; Section .0808, *Peaking Shaving Generators*; and Section .0810, *Air Curtain Burners*. These changes are a part of North Carolina’s strategy to attain and maintain the NAAQS and are approvable into the North Carolina SIP pursuant to section 110 of the CAA. EPA is not taking action on revisions to 15A NCAC Subchapter 2D – Air Pollution Control Requirements, Section .1201, *Purpose and Scope*, submitted on January 31, 2008, because this rule pertains to incinerators and addresses emission guidelines under CAA sections 111(d) and 129 and 40 CFR part 60; it is not a part of the federally-approved SIP. EPA will take separate action on 15A NCAC Subchapter 2D – Air Pollution Control Requirements, Section .1904, *Air Curtain Burners*.

The changes that are the subject of this direct final rulemaking include an addition to the

SIP of a new exclusionary rule for air curtain burners, amendments to existing definitions and additions of new definitions, amendments to open burning rules to account for new nonattainment areas, amendments to permitting rules to make them consistent with recent statutory changes, as well as modifications to other rules for clarifications, updates, and corrections. Detailed descriptions of the changes are below:

1. Regulation 15A NCAC 2D, Section .0101, *Definitions* and 2Q .0103, *Definitions*, as adopted by the EMC on March 11, 2004, and November 10, 2005:
 - A definition of “administrator” is added and contains two exceptions to whom it is referencing. The exceptions are for certain rules to specify who the administrator is for that rule and when EPA’s delegation or approval specifically states that EPA’s authority is retained by the EPA Administrator and that authority is not included in the delegation or approval. The definitions have been renumbered to reflect this addition.
 - 2D, Section .0101 is amended to include the definition of fine particulate matter “PM_{2.5}”.
 - 2Q, Section .0103 is also amended to change the definition of “construction” to exclude construction for permitting purposes in order to incorporate the activities defined by North Carolina statutes. Those activities defined in this change are clearing and grading; building access roads, driveways, and specified parking lots, building and installing underground pipe work; or the building of ancillary structures.
2. Regulations 15A NCAC 2D, Section .0103, *Copies of Referenced Federal Regulations* and 2Q, Section .0105, *Copies of Referenced Documents*, as adopted by the EMC on November 10, 2005, are amended to update the addresses of regional offices.
3. Regulation 15A NCAC 2D, Section .1901, *Purpose, Scope, and Permissible Open Burning*,

as adopted by the EMC on March 11, 2004, and July 11, 2007 (which revised some of the March 11, 2004, changes), is amended to revise the purpose of the section to include the protection of air quality in the immediate area of open burning and revise the definition of open burning. Additionally, this rule title has also been changed to *Open Burning: Purpose: Scope*.

4. Regulation 15A NCAC 2D Sections .1902, *Definitions* and .1903, *Permissible Open Burning Without an Air Quality Permit*, as adopted by the EMC on March 11, 2004, November 10, 2005, and July 11, 2007:

- These rules are amended to account for new nonattainment and forecast areas and to include forecasts for PM_{2.5}.
 - In Section .1902, definitions of “initiated,” “nonattainment area,” “off-site,” “air quality action day code ‘orange’ or above,” “air quality action day,” “smoke management plan,” “pile,” and “permanent site” have been added.
 - In Sections .1902 and .1903, the definition of “ozone forecast area” is replaced by “air quality forecast area.”
 - In Section .1903, the definition of “ozone action day” is replaced by “air quality action day.”
 - Other Amendments under Section .1902:
 - New forecast areas are added under the new definition “air quality forecast area.”
 - Other Amendments under Section .1903:

This section is amended to:

 - give the regional office supervisor the discretion to allow or disallow such

burning of land clearing debris within less than 1000 feet from a dwelling;

- remove the regional office supervisor's ability to allow fires to be initiated between 6 p.m. and 8 a.m. under favorable meteorological conditions; and
- allow fires purposely set for the instruction and training of personnel at permanent fire-fighting training facilities.
- The title of this section has been changed to *Open Burning Without an Air Quality Permit*.
- This section has also been reorganized to read more logically.

5. Regulation 15A NCAC 2D, Section .2001, *Purpose, Scope and Applicability*, as adopted by the EMC on November 10, 2005, is amended to clarify the applicability of the transportation conformity rules, which apply to areas identified as nonattainment or maintenance as determined by EPA in the Code of Federal Regulations or to areas listed in this rule.
6. Regulation 15A NCAC 2Q, Sections .0304, *Applications*, and .0305, *Application Submittal Content*, as adopted by the EMC on November 10, 2005, are amended to make the emissions inventory an integral part of the permit application package. As a result, a permittee must submit an emission inventory along with a request for permit renewal.
7. Regulation 15A NCAC 2Q, Section .0806, *Cotton Gins*, as adopted by the EMC on March 11, 2004, is amended to change the applicability of this rule to include cotton gins that gin cotton year-round instead of between September and January only. Paragraphs (c) and (g) of this rule are also revised for clarity.
8. Regulation 15A NCAC 2Q, Section .0808, *Peak Shaving Generators*, as adopted by the EMC on November 10, 2005, is amended to change the eligibility standard from one based

on energy production to one based on fuel consumption, which is more readily accessible. This rule excludes from Title V permitting requirements a facility's peak shaving generators if the generators' annual fuel consumption is below the levels noted in the rule. The fuel-consumption standard is designed to ensure that potential emissions of NO_x are below relevant permit applicability thresholds, and the rule imposes reporting and certification requirements on facilities claiming the exclusion. Therefore, the revision will not interfere with attainment and maintenance of the NAAQS pursuant to CAA section 110(l).

9. Regulation 15A NCAC 2Q, Section .0810, *Air Curtain Burners*, adds a new exclusionary rule for air curtain burners. This rule excludes from Title V permitting requirements certain air curtain burners that burn less than 8100 tons of land-clearing debris per year. The land-clearing-debris standard is designed to ensure that potential emissions of particulate matter are below relevant permit applicability thresholds, and the rule imposes reporting and certification requirements on facilities claiming the exclusion. Therefore, the revision will not interfere with attainment and maintenance of the NAAQS pursuant to CAA section 110(l).

II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of 15A NCAC Subchapter 2D – *Air Pollution Control Requirements*, Sect. .0101, *Definitions*; Sect. .0103, *Copies of Referenced Federal Regulations*; Sect. .1404, *Recordkeeping: Reporting: Monitoring*; Sect. .1901 *Open Burning: Purpose: Scope*; Sect. .1902, *Definitions*; Sect. .1903, *Open Burning Without An Air Quality Permit*; Sect. .2001, *Purpose, Scope, and Applicability*;

and Subchapter 2Q – Air Quality Permits, Sect. .0103, *Definitions*; Sect. .0105, *Copies of Referenced Documents*; Sect. .0304, *Applications*; Sect. .0305, *Application Submittal Content*; Sect. .0806, *Cotton Gins*; Sect. .0808, *Peaking Shaving Generators*, and Sect. .0810, *Air Curtain Burners*.

Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.¹ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information)

III. Final Action

EPA is approving the aforementioned revisions to the North Carolina SIP submitted by the State of North Carolina on October 14, 2004, March 24, 2006, and January 31, 2008, pursuant to section 110 because these revisions are consistent with the CAA and EPA policy. Changes to the other sections in these submissions will be processed in a separate action, as appropriate, for approval into the North Carolina SIP. As noted above, EPA is not taking action on changes to 15A NCAC Subchapter 2D – Air Pollution Control Requirements, Section .1201, *Purpose and Scope*, as submitted on January 31, 2008, because this rule pertains to incinerators and addresses emission guidelines under CAA sections 111(d) and 129 and 40 CFR part 60 and

¹ 62 Fed. Reg. 27968 (May 22, 1997).

is not a part of the federally-approved SIP.

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 [Insert date 60 days from the date of publication in the Federal Register] without further notice unless the Agency receives adverse comments by [Insert date 30 days from date of publication].

If 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 adverse comments received will then be addressed in a subsequent final rule based on the proposed rule. 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 [Insert date 60 days from date of publication] and no further action will be taken on the proposed rule. 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, the Agency may adopt as final those provisions of the rule that are not the subject of an adverse comment. 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. 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. *See* 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 [insert date 60 days

from date of publication 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 29, 2017.

V. Anne Heard,
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. In section 52.1770 (c), Table 1 is amended:

- a. Under Subchapter 2D – Air Pollution Control Requirements by revising entries for “Sect. .0101,” “Sect. .0103,” “Sect. .1901,” “Sect. .1902,” “Sect. .1903,” and “Sect. .2001;”
- b. Under Subchapter 2Q – Air Quality Permits by revising entries for “Sect. .0103,” “Sect. .0105,” “Sect. .0304,” “Sect. .0305,” “Sect. .0806,” and “Sect. .0808;” and
- c. Under Subchapter 2Q – Air Quality Permits by adding an entry for, “Sect. .0810.”

The revisions and addition read as follows:

§52.1770 Identification of plan

* * * * *

(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 .0100 Definitions and References				
Sect. .0101	Definitions	11/10/2005	[Insert date of publication in Federal Register] [Insert Federal Register citation]	

Sect. .0103	Copies of Referenced Federal Regulations	11/10/2005	[Insert date of publication in Federal Register] [Insert Federal Register citation]	
**	**	*	*	*
Section .1900 Open Burning				
Sect. 1901	Open Burning: Purpose: Scope	7/11/2007	[Insert date of publication in Federal Register] [Insert Federal Register citation]	
Sect. .1902	Definitions	7/11/2007	[Insert date of publication in Federal Register] [Insert Federal Register citation]	
Sect. .1903	Open Burning Without A Permit	7/11/2007	[Insert date of publication in Federal Register] [Insert Federal Register citation]	
**	**	*	*	*
Section .2000 Transportation Conformity				
Sect. .2001	Purpose, Scope, and Applicability	11/10/2005	[Insert date of publication in Federal Register] [Insert Federal Register citation]	
**	**	*	*	*
Subchapter 2Q – Air Quality Permits				
Section .0100 General Provisions				
**	**	*	*	*

Sect. .0103	Definitions	11/10/2005	[Insert date of publication in Federal Register] [Insert Federal Register citation]	
**	**	*	*	*
Sect. .0105	Copies of Referenced Documents	11/10/2005	[Insert date of publication in Federal Register] [Insert Federal Register citation]	
**	**	*	*	*
Section .0300 Construction and Operating Permits				
**	**	*	*	*
Sect. .0304	Applications	11/10/2005	[Insert date of publication in Federal Register] [Insert Federal Register citation]	
Sect. .0305	Application Submittal Content	11/10/2005	[Insert date of publication in Federal Register] [Insert Federal Register citation]	
**	**	*	*	*
Section .0800 Exclusionary Rules				
**	**	*	*	*
Sect. .0806	Cotton Gins	3/11/2004	[Insert date of publication in Federal Register] [Insert Federal Register citation]	
**	**	*	*	*

Sect. .0808	Peak Shaving Generators	11/10/2005	[Insert date of publication in Federal Register] [Insert Federal Register citation]	
Sect. .0810	Air Curtain Burners	11/10/2005	[Insert date of publication in Federal Register] [Insert Federal Register citation]	

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[FR Doc. 2017-14963 Filed: 7/17/2017 8:45 am; Publication Date: 7/18/2017]