



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2017-0359; FRL- 9966-48-Region 4]

Air Plan Approval;

South Carolina: Minor Source Permit Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to South Carolina's State Implementation Plan (SIP) to revise minor new source review (NSR) regulations. EPA is proposing to approve portions of SIP revisions modifying these regulations as submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), on the following dates: October 1, 2007, July 18, 2011, June 17, 2013, August 8, 2014, January 20, 2016, and July 27, 2016. This action is being proposed pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0359 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: D. Brad Akers, 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. Akers can be reached via telephone at (404) 562-9089 or via electronic mail at akers.brad@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Action is EPA Proposing?

On October 1, 2007, July 18, 2011, June 17, 2013, August 8, 2014, January 20, 2016, and July 27, 2016, SC DHEC submitted SIP revisions to EPA for approval that involve changes to South Carolina's minor source permitting regulations to clarify and streamline the State's federally-approved preconstruction and operating permitting program. This program requires minor stationary sources planning to construct or modify sources of air pollutants to first obtain a construction permit and to obtain and maintain operating permits in accordance with the South Carolina Code of Regulations Annotated (S.C. Code Ann. Regs.) at Regulation 61-62.1, Section

II - “Permit Requirements.” The portion of the SIP-approved permitting program covering construction permits is generally referred to as the minor source permitting program or the minor NSR program to distinguish it from additional permitting requirements for major sources of air pollutants.¹ The portion of the SIP-approved permitting program covering minor source operating permits is referred to as the federally enforceable state operating permit (FESOP) program. The changes made in these submittals clarify the applicability, streamline the permitting process, provide more options for the minor source permitting program, and generally reduce the overall burden on the state permitting program and the regulated community. The changes addressed in this proposed rulemaking also correct typographical errors, make internal references consistent, and recodify sections of the existing rules. In this action, EPA is proposing to approve certain portions of these SIP submissions that make changes to South Carolina’s minor NSR regulations and FESOP requirements.

EPA is not acting on a portion of the revisions to Regulation 61-62.1, Section II - “Permit Requirements.” Specifically, EPA is not acting on the renumbering and minor administrative language changes to paragraph G.6. - “Emergency Provisions,” in the October 1, 2007, submittal, nor the minor additional language changes to this portion of the minor source permitting regulations included in the August 8, 2014, submittal.²

¹ EPA’s regulations governing the implementation of NSR permitting programs are contained in 40 CFR 51.160 - .166; 52.21, .24; and part 51, Appendix S. The CAA NSR program is composed of three separate programs: prevention of significant deterioration (PSD), nonattainment new source review (NNSR), and Minor NSR. PSD is established in part C of title I of the CAA and applies to major stationary sources in areas that meet the national ambient air quality standards (NAAQS) – “attainment areas” – as well as areas where there is insufficient information to determine if the area meets the NAAQS – “unclassifiable areas.” The NNSR program is established in part D of title I of the CAA and applies to major stationary sources in areas that are not in attainment of the NAAQS – “nonattainment areas.” The Minor NSR program applies to stationary sources that do not require PSD or NNSR permits. Together, these programs are referred to as the NSR programs.

² In this action, EPA is not proposing to approve or disapprove revisions to any existing emission limitations that apply during start up, shut down and malfunction events.

At this time, EPA is not acting on the following changes included in the October 1, 2007, submittal: Regulation 61-62.5, Standard No. 4 - “Emissions from Process Industries”; and Regulation 61-62.5, Standard No. 5.2 - “Control of Oxides of Nitrogen (NOx).”

EPA is also not acting on changes in the July 18, 2011, submittal to the following regulations in South Carolina’s SIP: Regulation 61-62.1, Section I - “Definitions”; Regulation 61-62.3 - “Air Pollution Episodes”; Regulation 61-62.5, Standard No. 1 - “Emissions from Fuel Burning Operations”; Regulation 61-62.5, Standard No. 4 - “Emissions from Process Industries”; Regulation 61-62.5, Standard No. 6 - “Alternative Emission Limitation Options (Bubble)”; Regulation 61-62.5, Standard No. 7 - “Prevention of Significant Deterioration”; and Regulation 61-62.5, Standard No. 7.1 - “Nonattainment New Source Review.” EPA approved the changes to Regulation 61-62.5, Standard No. 2 - “Ambient Air Quality Standards,” included in the July 18, 2011, submittal, on April 3, 2013 (78 FR 19994).

EPA is not acting on the changes included in the June 17, 2013, submittal to the following regulations: Regulation 61-62.1, Section I - “Definitions”; Regulation 61-62.1, Section IV - “Source Tests”; Regulation 61-62.3 - “Air Pollution Episodes”; Regulation 61-62.5, Standard No. 4 - “Emissions from Process Industries”; and Regulation 61-62.5, Standard No. 5 - “Volatile Organic Compounds.”

Additionally, EPA is not acting on the changes included in the August 8, 2014, submittal to the following regulations: Regulation 61-62.1, Section I - “Definitions”; Regulation 61-62.1, Section IV - “Source Tests”; Regulation 61-62.1, Section V - “Credible Evidence”; Regulation 61-62.5, Standard No. 1 - “Emissions from Fuel Burning Equipment”; and Regulation 61-62.5, Standard No. 4 - “Emissions from Process Industries.” EPA approved the changes to Regulation

61-62.1, Section III - “Emissions Inventory and Emissions Statement,” included in the August 8, 2014, submittal, on June 12, 2015 (80 FR 33413) and May 31, 2017 (82 FR 24851).

EPA is also not acting on the changes included in the January 20, 2016, submittal to the following regulations: Regulation 61-62.5, Standard No. 5 - “Volatile Organic Compounds”; Regulation 61-62.5, Standard No. 7.1 - “Nonattainment New Source Review”; and Regulation 61-62.6 - “Control of Fugitive Particulate Matter.”

Finally, EPA is not acting on the changes included in the July 27, 2016, submittal to the following regulations: Regulation 61-62.1, Section I - “Definitions”; Regulation 61-62.5, Standard No. 4 - “Emissions from Process Industries”; and Regulation 61-62.5, Standard No. 5.2 - “Control of Oxides of Nitrogen (NO_x).” EPA will address these remaining changes to the South Carolina SIP in separate actions.

II. Analysis of State’s Submittal

A. Overview of Changes to Section II - “Permit Requirements”

South Carolina has a SIP-approved minor source permitting program at Regulation 61-62.1, Section II - “Permit Requirements.” These regulations include requirements for obtaining preconstruction and operating permits for different types of minor sources. The program covers “true minor” sources, which have the potential to emit (PTE) of certain pollutants below major sources thresholds for new sources and modifications. The SIP-approved minor source permitting program also includes provisions for issuing permits that establish federally enforceable emission limits to restrict the PTE of certain pollutants below major source and major modification applicability thresholds: “synthetic minor” permits establish these limits for sources obtaining construction permits, and “conditional major” permits establish these emission

limits in the corresponding operating permits. South Carolina initially revised its minor NSR and FESOP rules in the October 1, 2007, submittal to clarify and streamline requirements for obtaining minor source construction and operating permits. The July 18, 2011, June 17, 2013, August 8, 2014, January 20, 2016, and July 27, 2017, submittals make other clarifying and administrative changes, which are discussed for each subsection of the regulation below.

EPA has reviewed the proposed changes to the minor source construction and operating permitting regulations and preliminarily finds them to be consistent with CAA sections 110(a)(2)(C) and 110(l), EPA's minor NSR regulations found at 40 CFR 51.160 – 164, and the criteria applicable to an approvable State FESOP program.

B. Analysis of Changes to Each Section

1. Section II.A. - “Construction Permits”

Regulation 61-62.1, Section II.A - “Construction Permits” specifies applicability and certain requirements for obtaining permits for sources seeking to construct or modify emissions units. The October 1, 2007, submittal makes several changes to paragraph A. as follows: 1) adds allowed preconstruction activities at subparagraph A.1.d. for true minor sources (i.e., minor sources that are not synthetic minor sources); 2) adds the requirement that written notification be provided to the Department marking the commencement of construction and initial startup; 3) adds language requiring compliance with all terms, limits, and conditions of Department-issued construction permits; 4) adds time constraints for the validity of issued construction permits; and 5) removes the descriptions of permit application requirements from former paragraph A.2. to create a standalone subsection C. for construction permits, and to detail more specific requirements for other types of permits in other paragraphs.

The July 18, 2011, submittal makes subsequent clarifying and administrative changes to Section II.A., consolidating former subparagraph A.1.a. and paragraph A.5. into an introductory paragraph applicable to the entirety of Regulation 61-62.1, Section II. The submittal also makes other renumbering and administrative edits to the remaining subparagraphs.

The language moved to an introductory paragraph for Section II states: 1) the regulation will not supersede any state or federal requirements nor special permit conditions unless it imposes a more restrictive limit; 2) sources must comply with all terms, conditions, and limitations of any permit issued by SC DHEC for sources or activities at its facility; and 3) a source's permit status may change if new regulatory requirements become applicable. The effect of moving this language from subsection A. is to clarify that it is applicable to all of Section II – meaning it applies to any types of permits issued by the SC DHEC rather than only construction permits.

The August 8, 2014, submittal further modifies Section II.A. by making administrative edits and adding additional allowed preconstruction activities for true minor sources at subparagraph A.1.c, originally added in the October 1, 2007, submittal as subparagraph A.1.d.

The revision to subparagraph A.1.c. – added to the Regulation as A.1.d. in the October 1, 2007, submittal, renumbered in the July 18, 2011, submittal, and updated in the August 8, 2014, submittal – allows certain preconstruction activities prior to obtaining a final construction permit, provided that specific conditions are met. EPA has preliminarily determined that the preconstruction activities provision is consistent with the requirements of CAA sections 110(a)(2)(C) and 110(l), and federal regulations at 40 CFR 51.160 - 51.164.

Section 110(a)(2)(C) of the CAA requires that state SIPs include a program for regulating the construction and modification of stationary sources as necessary to ensure that the NAAQS are maintained. Federal regulations at 40 CFR 51.160(b) require states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the NAAQS. Federal regulations limit the types of allowed preconstruction activities for new and modified major sources at 40 CFR 51.165(a)(1)(xv), 51.166(b)(11), and 52.21(b)(11) and, as discussed below, South Carolina has adopted these provisions into its SIP. But federal regulations do not impose a corresponding limitation on preconstruction activities for minor sources. SC DHEC provided additional clarification of its allowed minor source preconstruction activities in a December 30, 2016, letter, which is included in the Docket for this proposed action. In this letter, SC DHEC first explains that “[a]llowed preconstruction activities are extremely limited in nature and do not include construction of that actual process unit itself.” The State also points to a requirement under Section II.C.3.n. that sources applying for construction permits demonstrate emissions will not interfere with attainment or maintenance of the NAAQS. This requirement corresponds to Section II.A.2. of the Regulation, which states that permits will not be issued if emissions interfere with any state or federal standard.

SC DHEC also points to its memorandum regarding allowed preconstruction activities for major sources prior to obtaining PSD permits.³ SC DHEC notes that its minor source preconstruction activities provisions mirror the federal limits on major source preconstruction activities, with the exception of one additional activity: allowing a facility to pour concrete foundation prior to obtaining a construction permit. This activity is only prohibited for major

³ This memorandum is also included in the Docket for this proposed action.

sources or major modifications prior to obtaining a permit in accordance with the definition of “begin actual construction” in the federal PSD regulations at 40 CFR 51.166(b)(11) and 52.21(b)(11), and the NNSR regulations at 51.165(a)(1)(xv). As SC DHEC explains in its clarifying letter, Section II.A.1.c. – which specifies which sources may engage in preconstruction activities – explicitly excludes “sources not requesting to use federally enforceable construction permit conditions to limit potential to emit, sources not subject to regulations with more stringent start of construction limitations, or sources not otherwise exempt from permit requirements.” In other words, the regulation excludes, among other sources, major sources subject to PSD regulations or CAA section 112 requirements for hazardous air pollutants (i.e., major sources and modifications).

In its December 30, 2016 letter, SC DHEC references Section II.A.1.d., which clearly states that the owners or operators of any sources that would not qualify for the issuance of a construction permit assume the financial risk of commencing the preconstruction activities listed in Section II.A.1.c. SC DHEC also notes that a source could be subject to an enforcement action under Section II.F.2. and Section II.J.1.e. – or subject to permit revocation under Section II.J.1.b – if the source either did not comply with the regulations during construction or would not have qualified for the preconstruction activities undertaken.

Because SC DHEC does not allow for the construction of process units, there are no increased emissions associated with any of the preconstruction activities allowed at Section II.A.1.c.i. - xvii. The gatekeeping applicability language at Section II.A.1.c. and major NSR applicability provisions at Regulation 61-62.5, Standard No. 7(a)(2) and Standard No. 7.1(a)(1), provide that no major sources or modifications may engage in the preconstruction activities

allowed under Section II.A.1.c.i. – xvii. Additionally, SC DHEC does not allow synthetic minor sources to conduct the preconstruction activities. Finally, SC DHEC has legally enforceable procedures to prevent construction or modification of a source if it would violate SIP control strategies or interfere with attainment or maintenance of the NAAQS, as required by 40 CFR 51.160(b).

The changes to South Carolina’s minor NSR program are not inconsistent with the requirements of the CAA and EPA’s regulations, and are therefore approvable as part of the SIP. EPA is therefore proposing to approve the aforementioned changes to subsection A. and the introductory portion of Section II pursuant to the CAA and 40 CFR 51.160 - 164.

2. Section II.B. - “Exemptions from the Requirement to Obtain a Construction Permit”

Regulation 61-62.1, Section II.B. - “Exemptions from the Requirement to Obtain a Construction Permit” specifies which types of minor sources are exempt from obtaining minor source construction permits. The October 1, 2007, submittal makes several changes to subsection II.B. as follows: 1) renumbers existing Section II.F. to Section II.B. and modifies the title to clarify that the paragraph applies only to construction permits; 2) adds language specifying that future source modifications or new regulatory requirements may trigger the need to obtain a permit for exempted facilities; 3) clarifies that the exemption for boilers and space heaters applies to those firing virgin solid and liquid fuels; 4) adds an exemption for boilers and space heaters firing only virgin gas fuels rated 10 million British thermal units per hour or less; 5) modifies the number of hours for testing and maintenance for exempted emergency generators; 6) modifies subparagraph B.2.h. to exempt additional sources with emissions less

than the threshold of 1 pound per hour (lb/hr) PTE of sulfur dioxide, nitrogen oxides, and carbon monoxide; 7) adds the requirement for SC DHEC to periodically publish a list of sources exempted from the construction permit requirement under subparagraphs B.2.a. - g. – and any other sources determined to qualify for permit exemptions based on subparagraph B.2.h. – in the *South Carolina State Register*; 8) adds procedures for sources requesting exemption from obtaining a construction permit under paragraph B.2. or paragraph B.4.; 9) adds paragraph B.6. to provide that exemptions under Section II.B. do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements; and 10) makes other administrative changes and adds references throughout subsection B.

The July 18, 2011, submittal makes subsequent revisions to clarify requirements and qualifications at Section II.B., as follows: 1) adds language to subparagraph B.2.h. to require that emissions calculations or other information necessary to demonstrate a source qualifies for the exemption must be kept on site and provided to SC DHEC upon request; 2) revises language in paragraph B.3. to clarify that source types which are added to the list of exempted sources will be determined not to interfere with attainment or maintenance of any state or federal standard; 3) adds language stating that SC DHEC reserves the right to require a construction permit on a case-by-case basis, and that case-by-case determinations will consider, but not be limited to, “the nature and amount of the pollutants, location, proximity to residences and commercial establishments, etc.”; and 4) makes administrative edits to existing language.

Finally, the August 8, 2014, submittal makes additional changes to paragraph II.B., including: 1) administrative edits to the title of the paragraph and to references and subparagraphs throughout; 2) revises the PTE criteria in subparagraph B.2.h. to a 5 ton per year

(tpy) threshold rather than 1 lb/hr, and adds language to state that sources with higher PTE may be exempted under this subparagraph if they demonstrate that they are not subject to any applicable state or federal limits or requirements; 3) amends paragraph B.3. to include language asserting that SC DHEC may develop emission thresholds for exemption that are determined will not interfere with attainment or maintenance of state or federal standards to include in the list maintained pursuant to this paragraph, and that SC DHEC could be petitioned to consider adding additional sources to this list; and 4) adds paragraph B.5. stating that sources of volatile organic compounds (VOCs) with a PTE greater than the emission threshold listed in subparagraph B.2.h. may be exempted from the requirement to obtain a construction permit on a case-by-case basis, and that exempt sources may later be required to be included in construction or operating permits.

Section 110(a)(2)(C) of the CAA requires that SIPs include a program for regulating the construction and modification of stationary sources as necessary to ensure that the NAAQS are maintained. Federal regulations at 40 CFR 51.160(e) require that states identify the types and sizes of sources subject to review and the basis for determining which sources are subject. Additionally, CAA section 110(l) provides that EPA shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the CAA. SC DHEC has determined that specific sources listed at paragraphs B.1. and B.2. do not require permits because their size is not such that they are expected to interfere with attainment or maintenance of state or federal standards, including reasonable further progress.

SC DHEC's December 30, 2016, letter provides additional clarification for certain changes made to Section II.B. Subparagraph B.2.f. extends the testing and maintenance operation threshold for exempting emergency generators from 250 hours to 500 hours per year. SC DHEC considered CAA section 110(l), and asserts that the state expects no increase in actual emissions as a result of raising this exemption threshold. SC DHEC explains that the 500 hours per year threshold is commonly used to determine the PTE for title V and other major source applicability determinations, consistent with an EPA guidance memorandum.⁴ These sources are still restricted to emergency conditions, meaning that other types of non-emergency activities – such as peak shaving – would not qualify for the exemption under paragraph II.B. Additionally, SC DHEC points to applicable federal requirements for emergency generators at 40 CFR part 63 at subpart ZZZZ and 40 CFR part 60 at subparts IIII and JJJJ to restrict non-emergency use of these sources to 100 hours per year. Therefore, this change to subparagraph B.2.f. will not result in any real increase in emissions and therefore will not affect the state's ability to attain or maintain state or federal standards or reasonable further progress. The State also has the discretion to define the scope of its minor NSR program pursuant to 40 CFR 51.160(e).

SC DHEC in its letter also addresses changes made to subparagraph II.B.h. potentially allowing certain sources with PTE exceeding the thresholds of this subparagraph to be exempt from the requirement to obtain a construction permit. SC DHEC asserts that this provision is primarily intended to apply to sources with PTE only slightly above the thresholds in subparagraph II.B.h. SC DHEC notes the safeguards built into the language that sources subject to any applicable requirements are not exempt from obtaining construction permits. The letter

⁴ Seitz, John S. "Calculating Potential to Emit (PTE) for Emergency Generators." Memorandum to Program Directors in EPA Regional Offices, Office of Air Quality Planning and Standards, Research Triangle Park, NC (September 6, 1995).

then steps through an example of the process that small sources of VOC emissions would undergo, including an assessment of any potentially applicable requirements related to NAAQS, toxics, or hazardous air pollutants; consideration of the PTE relative to major source thresholds; and any other special considerations. SC DHEC determines the applicability of construction permits for these sources under close scrutiny on a case-by-case basis. This process in determining which types and sizes of sources need to undergo preconstruction review and permitting, afforded the State pursuant 40 CFR 51.160(e), is sufficient to protect the NAAQS and prevent interference with reasonable further progress, consistent with CAA sections 110(a)(2)(C) and 110(l).

SC DHEC's change to paragraph II.B.3. notes that SC DHEC may develop emission thresholds for exemptions that are not determined not to interfere with attainment or maintenance or any state or federal standard. EPA understands this language to reflect SC DHEC's flexibility for determining which types and sizes of sources need to undergo preconstruction review and permitting pursuant 40 CFR 51.160(e), and understands that these thresholds would need to be in the SIP, similar to Subparagraph II.B.h. The compiled list is available on SC DHEC's website.⁵ EPA preliminarily agrees that SC DHEC clearly lays out the types and sizes of sources of interest for preconstruction review, and also the reasonable process by which case-by-case determinations are made to exempt sources with emissions above the thresholds in subparagraph B.2.h., but less than any thresholds for other applicable requirements like major NSR. EPA also preliminarily agrees that this portion of South Carolina's minor NSR program does not interfere with attainment or maintenance of the NAAQS, reasonable further progress, or other applicable

⁵ The latest compiled list of exempted sources was updated as of December 2016:
<http://www.scdhec.gov/Environment/docs/NewExemptions.pdf>

CAA requirements. Therefore, we are proposing to approve changes to the SIP made to Section II.B. pursuant to CAA sections 110(a)(2)(C) and 110(l), as well as 40 CFR 51.160 – 164.

3. Section II.C. - “Construction Permit Applications”

Regulation 61-62.1, Section II.C - “Construction Permit Applications,” specifies the requirements for sources applying for and obtaining construction permits. The October 1, 2007, submittal makes several changes to subsection C. as follows: 1) renumbers former paragraph A.2. to standalone subsection C and changes the title to specify that the requirements apply to construction permit applications; 2) makes administrative edits, including renumbering; 3) adds paragraph C.3. to reference SC DHEC forms which were created to ease the permit application process; and 4) renumbers former subparagraphs B.2.a. - g. to C.3.a. - p., reformatting and clarifying what information may be required in addition to the SC DHEC forms, including more specific process, chemical, and emissions information used to determine PTE, an air quality analysis demonstrating protection of the NAAQS, and a regulatory applicability determination.

The July 18, 2011, submittal further modifies Section II.C. at subparagraphs C.3.c. - d. to make administrative edits. South Carolina’s August 8, 2014, submittal makes additional administrative and clarifying edits. The January 20, 2016, submittal also makes minor administrative edits. Finally, the July 27, 2016, submittal makes one change to subparagraph C.2.m. to clarify that scale drawings of the facility must include buildings that might affect dispersion of emissions.

EPA has reviewed the changes made to the construction permit application requirements and is proposing to approve them into the SIP, pursuant to CAA sections 110(a)(2)(C) and 110(l).

4. Section II.D. - “General Construction Permits”

Regulation 61-62.1, Section II.D. - “General Construction Permits” provides regulations by which SC DHEC can issue general construction permits for similar sources. South Carolina’s October 1, 2007, submittal adds these provisions to the minor NSR program for construction permits to facilitate the permitting process for similar sources qualifying for and applying for coverage under permits with general terms and conditions. The purpose of this general permitting minor NSR program is to protect the NAAQS while simplifying the permitting process for similar sources. The general construction permits paragraph provides for the following: 1) general permits will incorporate all applicable requirements for construction of similar sources and identify the criteria by which sources can qualify for the permit; 2) sources can submit construction permit applications to SC DHEC that include requests for coverage under the general permit, and sources later determined not to qualify for the general permit are subject to enforcement; 3) approval to operate under a permit is a final permit action for the purposes of judicial review; 4) the permit application can deviate from the provisions of Section II.C. if enough information is included to determine the source’s qualification for the general permit; and 5) sources qualifying for general permits are able to apply for individual construction permits in lieu of coverage under the general permit.

The August 8, 2014, submittal makes administrative and clarifying edits to subsection II.D. throughout. EPA has reviewed the changes made to the minor NSR permitting program and is proposing to approve them into the SIP, pursuant to CAA sections 110(a)(2)(C) and 110(l).

6. Section II.E. - “Synthetic Minor Construction Permits”

Regulation 61-62.1, Section II.E. - “Synthetic Minor Construction Permits” specifies requirements for obtaining construction permits with federally enforceable emissions limits to restrict PTE for sources. South Carolina’s October 1, 2007, submittal revises the paragraph for synthetic minor sources as follows: 1) renumbers subsection II.H. to subsection II.E.; 2) makes administrative and clarifying amendments to the title and throughout the paragraph to clearly indicate that this paragraph pertains to construction permits and to update references; 3) removes former subparagraphs II.2.c. - f. as these requirements are now redundant and covered by other portions of subsection E. or Section II; 4) adds paragraph E.3. to list required synthetic minor permit conditions; 5) adds administrative language to make applications for general synthetic minor construction permits consistent with other construction permit applications; and 6) adds paragraph E.5. to list additional requirements for synthetic minor construction permit applications relative to other minor construction permit applications.

The August 8, 2014, submittal makes changes to subsection II.E. to update administrative language and references throughout the paragraph. The July 27, 2016, submittal also makes administrative edits to subparagraph E.2.b. EPA has reviewed the changes made to the requirements covering synthetic minor construction permits and is proposing to approve them into the SIP, pursuant to CAA sections 110(a)(2)(C) and 110(l), and 40 CFR 51.160 - 164.

7. Section II.F. - “Operating Permits”

Regulation 61-62.1, Section II.F. - “Operating Permits” specifies requirements for obtaining minor source operating permits. South Carolina’s October 1, 2007, submittal makes several changes to subsection II.F. to clarify and add requirements, including: 1) renumbering subsection II.B. to II.F.; 2) adding paragraph F.1. to require sources to record the actual date of

initial startup and submit it to SC DHEC; 3) adding paragraph F.2. to require certification that construction was completed in accordance with the specifications of the construction permit, to require any variances from the construction permit to be addressed, and to assert that construction variances which would trigger new requirements will be considered construction without a permit; 4) adding language to clarify that title V sources may comply with the Section II.F operating permit requirements by submitting a permit modification request under 61-62.70.7(e) ; 5) adding language to clarify that the existing requirement to provide a written request to SC DHEC for a new or revised operating permit applies to minor sources and those major sources not yet covered by a title V permit; 6) adding subparagraph F.3.c. to specify that the written request for a new or revised operating permit must include a list of sources put into operation and the actual initial startup dates for those sources; 7) making other administrative edits throughout the paragraph; and 8) moving paragraph B.2. regarding permit renewals to a standalone subsection II.H.

The August 8, 2014 and July 27, 2016, submittals make administrative changes to Section II.F. - “Operating Permits.” EPA has reviewed the changes made to the existing SIP requirements for applying for an operating permit and is proposing to approve them into the SIP, pursuant to CAA sections 110(a)(2)(C) and 110(l).

8. Section II.G. - “Conditional Major Operating Permits”

Regulation 61-62.1, Section II.G. - “Conditional Major Operating Permits” specifies requirements for obtaining operating permits with federally enforceable emissions limits to restrict PTE for sources. South Carolina’s October 1, 2007, submittal makes several changes to subsection II.G. to clarify applicability and requirements as follows: 1) adds language to specify

that paragraph II.G. applies to sources requesting federally enforceable limits to restrict PTE below major source thresholds; 2) adds language to specify that sources which received synthetic minor construction permits and that are not subject to title V will receive conditional major operating permits; 3) adds permit shield language to note that if the renewal request is submitted pursuant to paragraph II.H., conditional major sources can operate under the most recent conditional major permit until SC DHEC processes the renewal request; 4) adds language to note that the written request provided by new sources needs to include any additional information specified in subparagraph G.5.; 5) adds language and clarifies existing language to note that the permit conditions, including special conditions to verify compliance with operational and emissions limits, are located at subsection II.J.; 6) modifies existing language to specify additional requirements for conditional major operating permit applications only; 7) removes requirements pertaining to construction permit application requirements because subsections II.C. and II.E. otherwise cover these requirements; 8) removes requirements pertaining to standard operating permit applications because those are otherwise covered by subsection II.F.; 9) adds language to specify that the general information requirements in construction permit applications at paragraph C.3. also apply to conditional major operating permits; and 10) makes other administrative language changes throughout the paragraph.

The July 18, 2011, August 8, 2014, and July 27, 2016, submittals make additional administrative changes to subsection II.G. EPA has reviewed the changes made to SC DHEC's conditional major source program, which is a portion of the FESOP minor source program, and agrees that the revisions made to subsection II.G. clarify the requirements for obtaining conditional major operating permits. Further, EPA has determined that the conditional operating

permit program remains consistent with the criteria for approving FESOP programs.⁶ Therefore, EPA is proposing to approve these changes into the SIP pursuant to CAA sections 110(a)(2)(C) and 110(l).

9. Section II.H. - “Operating Permit Renewal Request”

Regulation 61-62.1, Section II.H. - “Operating Permit Renewal Request” specifies requirements for renewing operating permits for minor sources. South Carolina’s October 1, 2007, submittal makes several changes to subsection II.H. to clarify applicability and requirements as follows: 1) renumbers former paragraph B.2. to make a standalone subsection at II.H.; 2) adds paragraph H.1. to clarify that operating permits must be renewed through a written request; 3) adds paragraph H.2. to clarify that subsection II.H does not apply to title V sources; 4) adds language to specify that sources must submit permit renewal requests no later than 90 days prior to expiration of the existing operating permit; 5) revises language to expand the type of information needed to verify special permit conditions; 6) adds language to require more specific information in the renewal request, including changes in the source information required for construction permits under paragraph C.3.; and 7) makes administrative language changes throughout the paragraph.

The July 18, 2011, June 17, 2013, August 8, 2014, and July 27, 2016, submittals make several administrative edits and correct typographical errors throughout subsection II.H. EPA has reviewed the changes made to the operating permit renewal requirements and believes these changes are more specific and help to ensure SC DHEC has the best information possible when evaluating renewal requests. EPA has also preliminarily determined that the changes will not interfere with attainment or maintenance of the NAAQS, reasonable further progress, or other

⁶ EPA approved SC DHEC’s FESOP program on December 11, 1995 (60 FR 63434).

applicable CAA requirements. EPA is therefore proposing to approve these changes into the SIP, pursuant to CAA sections 110(a)(2)(C) and 110(l).

10. Section II.I. - “Registration Permits”

Regulation 61-62.1, Section II.I. - “Registration Permits” provides regulations by which SC DHEC can issue registration permits, covering the construction and operation of similar sources. South Carolina’s October 1, 2007, submittal adds these provisions to the minor source construction and operating permitting program to facilitate the permitting process for similar true minor sources qualifying for and applying for coverage permits for specific source categories. The purpose of this registration permitting minor source program is to protect the NAAQS while simplifying the permitting process for similar true minor sources. The difference between registration permits and general construction permits or general operating permits is that this program develops permits for specific source categories exclusively for true minor sources.

The October 1, 2007, submittal provides the following requirements for registration permits under paragraph II.I: 1) registration permits will be developed by SC DHEC and will specify all applicable requirements for construction and operation of similar true minor sources; 2) registration permits will be developed only for true minor sources; 3) sources can submit applications for coverage by certifying qualification for, and agreeing to the conditions of, registration permits, and sources later determined not to qualify for the registration permit are subject to enforcement; 4) approval to operate under a permit is a final permit action for the purposes of judicial review; and 5) sources will adhere to general requirements under paragraph II.J.1., and any other special permit conditions necessary to verify compliance with operational and emission limits.

The July 18, 2011, submittal makes subsequent changes to subsection II.I. as follows: 1) makes administrative edits; 2) adds language to assert that regardless of qualification for registration permits, SC DHEC reserves the right to require construction and operating permits, as determined on a case-by-case basis; and 3) changes language to clarify that registration permits shall contain any applicable permit conditions under subsection II.J., rather than all permit conditions listed in paragraph II.J., as SC DHEC finds appropriate.

The August 8, 2014, submittal includes other changes to paragraph II.I., including administrative edits throughout and adding language to assert that SC DHEC can reopen registration permits for cause or to include new standards or regulations that become applicable during the lifetime of the permit. The August 8, 2014, submittal also removes language at subparagraph I.1.a. requiring SC DHEC to provide notice and opportunity for public participation prior to developing new registration permits. However, the State withdrew this change from EPA's consideration in a letter dated August 7, 2017.⁷ In the letter, SC DHEC explained that its intent in withdrawing the change was to require the Department to comply with the public participation procedures at subsection II.N. when developing registration permits.

EPA has reviewed the changes made to the registration permit requirements, as clarified by the State's August 7, 2017, letter, and is proposing to approve them into the SIP, pursuant to CAA sections 110(a)(2)(C) and 110(I), and 40 CFR part 51, subpart I.

11. Section II.J. - "Permit Conditions"

Regulation 61-62.1, Section II.J. - "Permit Conditions" specifies required standard and special permit conditions. The October 1, 2007, submittal combines the standard and special permit conditions into a standalone section for required permit conditions. This submittal makes

⁷ The August 7, 2017, letter has been included in the docket for this action.

the following changes at paragraph J.: 1) renumbers former subsection II.C. to II.J. and modifies the title to reflect that the subsection applies to all permit types; 2) requires sources to submit reports as specified in applicable permits, laws, regulations, or standards; 3) adds language to assert that a source may be subject to enforcement if it fails to construct in accordance with the application and any issued construction permit, or constructs without applying for approval; 4) adds language to clarify the time period over which construction permits are valid; 5) renumbers paragraph G.4. to paragraph J.2. and modifies the title to clarify that what follows are special permit conditions; 6) adds language stating that SC DHEC will require special permit conditions as it finds appropriate, such as operational limits or reporting and recordkeeping requirements; 7) removes former subparagraph G.4.g., which states conditions to limit PTE must be federally enforceable, because the State otherwise imposes this requirement for synthetic minor construction permits at subparagraph E.3. and conditional major operating permits at subparagraph G.5.; and 8) makes administrative language changes throughout subsection II.J.

One change made to subparagraph J.1.d., formerly C.4., in the October 1, 2007, submittal regards when emissions reports need to be made. In the place of a specific quarterly timeframe, the change directs sources to comply with reporting requirements derived from applicable permit requirements, laws and regulations, or standards. There are no specific reporting requirements for minor sources specified in federal regulations at 40 CFR 51.160 - 164, so these reporting schedules can be developed as SC DHEC deems necessary.⁸ Moreover, subparagraph J.1.a. states that “[n]o applicable law, regulation or standard will be contravened.” Thus, if there is a prescriptive state or federal requirement for reporting of emissions that applies to any of these minor sources, the permits will set the necessary reporting schedule accordingly. Therefore,

⁸ 40 CFR 70.6 generally requires semiannual emissions and compliance reporting.

EPA has determined that this change does not interfere with attainment or maintenance of the NAAQS, reasonable further progress, or any other applicable CAA requirements.

The July 18, 2011, submittal makes further revisions to subsection II.J., including: 1) adding language stating that false information or misrepresentation in a permit application is grounds for permit revocation; 2) adding language stating that the issued construction or operating permit must be kept at the facility and that records must be kept as prescribed on site for at least five years; and 3) making administrative and clarifying edits. The August 8, 2014, submittal makes additional administrative changes.

EPA has reviewed the changes to standard and special permit requirements for the minor source construction and operating permit program and is proposing to approve them into the SIP pursuant to CAA section 110(a)(2)(C) and 110(l).

12. Section II.K. - “Exceptions”

Regulation 61-62.1, Section II.K. - “Exceptions” sets forth factors that SC DHEC shall consider in determining whether to impose alternative emissions limits, compliance schedules, or other restrictions. The October 1, 2007, submittal makes non-substantive changes to this subsection, including renumbering this existing subsection from II.D. to II.K., and making administrative language changes. EPA is therefore proposing to approve the aforementioned changes into the SIP pursuant to CAA sections 110(a)(2)(C) and 110(l).

13. Section II.M. - “Transfer of Ownership/Operation”

Regulation 61-62.1, Section II.M. - “Transfer of Ownership/Operation” specifies procedures for owners or operators of sources to undertake if the ownership or operation is transferred to another party. The October 1, 2007, submittal makes minor changes to this

regulation to renumber existing subsection II.E. to subsection II.M. and to add more specific requirements for the written request to transfer ownership or operation of a source. The August 8, 2014, submittal makes only administrative changes to language in this subsection.

EPA has reviewed the changes to this existing portion of the minor source permitting regulations and is proposing to approve the aforementioned changes into the SIP pursuant to CAA section 110(a)(2)(C) and 110(l).

14. Section II.N. - “Public Participation Procedures”

Regulation 61-62.1, Section II.N. - “Public Participation Procedures,” specifies the public participation requirements for sources applying for and obtaining federally enforceable minor source construction and operating permits. The October 1, 2007, submittal makes several changes to subsection N. as follows: 1) renumbers existing paragraph G.5. to create a standalone paragraph for public participation and clarify that these procedures can apply to other types of permit requests rather than only conditional major source operating permits; 2) adds language providing SC DHEC with discretion to require notice of permitting activity, even when not otherwise required by the State’s regulations; 3) adds language stating that SC DHEC can use means other than publishing in newspapers, the *State Register*, and mailing lists to notify the public of minor source permitting; and 5) makes administrative language edits for consistency.

The July 18, 2011, submittal makes one clarifying edit to reflect that an approved construction permit is required prior to the commencement of construction. The August 8, 2014, submittal makes administrative and clarifying edits to subsection II.N., including: 1) adding language to subparagraph N.1. to identify the SC DHEC website as another method of notifying the public of permitting activity; 2) reformatting and revising paragraph N.2. to list the required

elements of the public notice; 3) revising language to identify how SC DHEC will address and record comments, and broadening the SC DHEC procedures to note that the State will respond to all comments rather than only those received in writing or at the public hearing; 4) removing language requiring SC DEHC to respond to all comments in writing; and 5) making administrative edits.

The changes in the October 1, 2007, submittal to allow for other methods of public notice, and in the August 8, 2014, submittal to explicitly list the SC DHEC website as a possible method of public notice are consistent with the minor source permitting regulations at 40 CFR 51.161. EPA has existing policy asserting that the public notice requirement for minor source permitting activities at 40 CFR 51.161(b)(3) is media-neutral, meaning that the public notice requirement can be met as long as the State interprets the method to be “prominent advertising.”⁹ SC DHEC can therefore make use of its website, mailing lists, and other methods in lieu of publication in a newspaper. The provisions at subsection II.N. pertain only to minor sources, and any major source public notice requirements are contained in the major source PSD, NNSR, and title V regulations.¹⁰

EPA has reviewed the public notice requirements and preliminarily finds that the changes currently before the Agency are not inconsistent with the CAA and EPA’s implementing regulations, including the criteria for approving FESOP programs. *See* 54 FR 27274 (June 28, 1989). Therefore, EPA is proposing to approve the changes to the existing public notice

⁹ McCabe, Janet, “Minor New Source Review Program Public Notice Requirements under 40 CFR 51.161(b)(3),” Memorandum to Regional Administrators, Office of Air and Radiation, Washington, D.C. (April 17, 2012).

¹⁰ EPA published a final rule on October 18, 2016 (81 FR 71613) amending the public notice requirements for major source permitting programs to allow for other means of public notice, including websites. This proposed rulemaking only deals with changes to South Carolina’s minor source permitting regulations.

requirements for the minor NSR and FESOP programs, pursuant to CAA section 110(a)(2)(C) and 40 CFR 51.160 - 164.

15. Section II.O. - “Inspection and Entry”

Regulation 61-62.1, Section II.O. - “Inspection and Entry,” specifies requirements to allow SC DHEC officials to enter and inspect facilities. South Carolina’s July 18, 2011, submittal adds these provisions to the minor source construction and operating permitting program to allow for verification of adherence to permit conditions. The August 8, 2014, submittal makes one additional administrative change to the introductory language at subsection II.O. The ability for SC DHEC to enter and inspect facilities enables the State to oversee the minor source permitting program, including assisting in potential enforcement actions. EPA is therefore proposing to approve this subsection and its updated provisions into the SIP, pursuant to CAA section 110(a)(2)(C).

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference South Carolina Regulation 61-62.1, Section II - “Permit Requirements,” effective June 24, 2016,¹¹ which revises the federally enforceable minor source construction and operating permit program. 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).

V. Proposed Action

¹¹ See Section I and Section II.C. of this proposed rule for additional detail.

EPA is proposing to approve portions of revisions to the South Carolina SIP submitted by SC DHEC to EPA on October 1, 2007, July 18, 2011, June 17, 2013, August 8, 2014, January 20, 2016, and July 27, 2016. Specifically, EPA is proposing to approve the changes to S.C. Code Ann. Regs. 61-62.1, Section II - “Permit Requirements,” as discussed above, pursuant to CAA section 110(a)(2)(C), section 110(l), and 40 CFR 51.160 - 164.

VI. 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 proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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).

In addition, this proposed rule for South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the state of South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120, “all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” EPA notes this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: August 7, 2017.

V. Anne Heard,
Acting Regional Administrator,
Region 4.

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