



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R04-OAR-2018-0296; FRL-9982-02-Region 4]

**Air Plan and Operating Permit Program Approval: AL, GA and SC;
Revisions to Public Notice Provisions in Permitting Programs**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of State Implementation Plan (SIP) revisions and the Title V Operating Permit Program revisions submitted on May 19, 2017, by the State of Alabama, through the Alabama Department of Environmental Management (ADEM); submitted on November 29, 2017, by the State of Georgia, through the Georgia Environmental Protection Division (Georgia EPD); and submitted on September 5, 2017, by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC). These revisions address the public notice rule provisions for the New Source Review (NSR) and Title V Operating Permit programs (Title V) of the Clean Air Act (CAA or Act) that remove the mandatory requirement to provide public notice of a draft air permit in a newspaper and that allow electronic notice (“e-notice”) as an alternate noticing option. EPA is proposing to approve these revisions pursuant to the CAA and implementing federal regulations.

DATES: Written 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-2018-0296 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 content 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: Ms. Kelly Fortin of the Air Permitting 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. Ms. Fortin can be reached by telephone at (404) 562-9117 or via electronic mail at fortin.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 2016, EPA finalized revised public notice rule provisions for the NSR, Title V, and Outer Continental Shelf permitting programs of the CAA. *See* 81 FR 71613 (October 18, 2016). These rule revisions remove the mandatory requirement to provide public notice of a

draft air permit through publication in a newspaper and allow for internet e-notice as an option for permitting authorities implementing their own EPA-approved SIP rules and Title V rules, such as the Alabama, Georgia, and South Carolina EPA-approved programs. Permitting authorities are not required to adopt e-notice. Nothing in the final rules prevents a permitting authority of an EPA-approved permitting program from continuing to use newspaper notification and/or from supplementing e-notice with newspaper notification and/or additional means of notification. When e-notice is provided, EPA's rule requires electronic access (e-access) to the draft permit. Generally, state and local agencies intend to post the draft permits and public notices in a designated location on their agency websites. For the noticing of draft permits issued by permitting authorities with EPA-approved programs, the rule requires the permitting authority to use "a consistent noticing method" for all permit notices under the specific permitting program.

EPA anticipates that e-notice, which is already being practiced by many permitting authorities, will enable permitting authorities to communicate permitting and other affected actions to the public more quickly and efficiently and will provide cost savings over newspaper publication. EPA further anticipates that e-access will expand access to permit-related documents. A full description of the e-notice and e-access provisions are contained in EPA's October 18, 2016 (81 FR 71613), publication.

II. Analysis of Alabama's E-notice Rule Revisions

Chapter 335-3-14, *Air Permits*; Chapter 335-3-15, *Synthetic Minor Operating Permits*; and Chapter 335-3-16, *Major Source Operating Permits*, were revised to incorporate EPA's amendments to the federal public notice regulations discussed above. Specifically, ADEM

revised 335-3-14-.01(7) (General Provisions), -.04(16) (Prevention of Significant Deterioration Permitting; Public Participation), -.04(19) (Prevention of Significant Deterioration Permitting; Permit Rescission) -.05(16) (Air Permits Authorizing Construction in or near Non-Attainment Areas; Public Participation), -.06(3)(e) (Public Participation for permitting involving maximum achievable control technology determinations), -15-.05 (Synthetic Minor Operating Permits; Public Participation), and -16-.15(4) (Major Source Operating Permits; Public Participation). ADEM's regulations were the subject of a public hearing on March 8, 2017, were adopted on April 21, 2017, and became effective on June 9, 2017. Based on a review of these proposed revisions, EPA has preliminarily determined that they meet the requirements of the revised federal e-notice provisions. ADEM's revised rules require that for all draft permits for potential major NSR, Title V, and synthetic minor sources, all public notices, a copy of all materials submitted by the applicant, the preliminary determination, and a link to the draft permit will be posted on the Department's website for the duration of the public comment period.

Chapters 335-3-14 (Air Permits) and 335-3-15 (Synthetic Minor Operating Permits) are SIP elements and the public notice revisions to these SIP-approved rules are proposed to be incorporated into the Alabama SIP, which also applies to permits issued by Jefferson County Department of Health and the City of Huntsville, Alabama.¹ Chapter 335-3-16 (Major Source Operating Permits) is part of ADEM's EPA-approved Title V Operating Permit program, which is not part of the Alabama SIP.² EPA is proposing to approve these Title V program revisions pursuant to 40 CFR 70.4. Jefferson County Department of Health and the City of Huntsville,

¹ EPA is not proposing to act on the portion of Alabama's May 19, 2017 SIP revision regarding 335-3-14-.06 because that rule is not part of the federally-approved Alabama SIP.

² EPA fully approved Alabama's Title V Operating Permit program on October 29, 2001 (66 FR 54444).

Alabama, have Title V operating permit programs that were originally approved by EPA separately from ADEM's Title V Operating Permit program, as these local programs have authority under Alabama State law to develop local regulations that ensure applicants are required, at a minimum, to satisfy the requirements of State law. Hence, EPA will take separate action on the revisions to the Jefferson County Department of Health and City of Huntsville, Alabama, Title V programs upon receipt of their respective submittals.

III. Analysis of Georgia's E-notice Rule Revisions

Rule 391-3-1-.02(7)(a)1, *Prevention of Significant Deterioration of Air Quality*, and Rule 391-3-1-.03(10), *Title V Operating Permits*, of *Georgia's Rules for Air Quality Control, Chapter 391-3-1*, were revised to incorporate EPA's amendments to the federal public notice regulations, as discussed above. Georgia EPD's revisions were the subject of a public hearing on May 9, 2017, were adopted on June 28, 2017, and became effective on July 20, 2017. Based on a review of the proposed revisions, EPA has preliminarily determined that Georgia EPD's provisions for the PSD and Title V Operating Permit programs meet the requirements of the revised federal e-notice provisions at 40 CFR 51.166 and 40 CFR 70.7.

Rule 391-3-1-.02(7)(a)1, *Prevention of Significant Deterioration of Air Quality* is a required SIP element and, hence, the revision to this SIP-approved rule is proposed to be incorporated into the Georgia SIP. Georgia EPD's SIP-approved PSD rules incorporate by reference the public participation requirements of 40 CFR 52.21(q). In this revision, Georgia EPD updated the incorporation by reference date to include EPA's October 18, 2016, promulgation of the e-notice revisions. These provisions require both e-notice and e-access.

Rule 391-3-1-.03(10), *Title V Operating Permits*, of *Georgia's Rules for Air Quality*

Control is part of Georgia’s EPA-approved Title V Operating Permit program, which is not part of the Georgia SIP.³ Georgia EPD’s Title V program incorporates by reference public participation requirements of the federal provisions at 40 CFR 70.7(h). In this revision, Georgia EPD updated the incorporation by reference date to include EPA’s October 18, 2016, promulgation of the e-notice revisions, which allow for either electronic notice or newspaper notice, and require that the State use a consistent noticing method. The Georgia Air Quality Act, however, requires newspaper notice upon receipt of a complete application for a Title V permit or Title V permit modification. *See* O.C.G.A. § 12-9-9. Until such time that requirement is lifted, Georgia EPD will continue to publish both a newspaper notice and electronic notice, and will inform the public and EPA when Georgia EPD intends to move to electronic notices only. EPA is proposing to approve the public notice revision to Georgia’s EPA-approved Title V Operating Permit program.⁴

IV. Analysis of South Carolina’s E-notice Rule Revisions

Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, and Regulation 61-62.70, *Title V Operating Permit Program* of the South Carolina Air Pollution Control Regulations and Standards, were revised to incorporate EPA’s amendments to the federal public notice regulations discussed above. Specifically, SC DHEC revised Regulation 61-62.5, Standard No. 7 at Sections (q) and (w)(4) and Regulation 61-62.70 at Section 7(h). SC DHEC’s regulations were the subject of a public hearing on August 10, 2017, and were adopted and became effective on August 25, 2017.

³ EPA fully approved Georgia’s Title V Operating Permit program on June 8, 2000 (65 FR 36358).

⁴ In its November 29, 2017, submittal, GA EPD also sought to revise its EPA-approved Title V Operating Permit program to “exempt fire pumps from permitting and to specify fire pumps as an insignificant activity for the purposes of Title V.” EPA is not proposing to act on this proposed revision at this time.

SC DHEC's revisions add language allowing the Department to use e-notice and requiring e-access if e-notice is used as the consistent noticing method. Based on a review of the proposed revisions, EPA has preliminarily determined that SC DHEC's revisions meet the requirements of the revised federal e-notice provisions. SC DHEC's revised rules require that for all proposed PSD and Title V permits, the Department will use a "consistent noticing method." SC DHEC has indicated that they intend to use a public website identified by the Department as their consistent noticing method.⁵

Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration* is a required SIP element and, hence, the public notice revisions to this SIP-approved rule are proposed to be incorporated into the South Carolina SIP. Regulation 61-62.70, *Title V Operating Permit Program* is part of South Carolina's EPA-approved Title V Operating Permit program, which is not part of the South Carolina SIP, and the public notice revisions are therefore being proposed for approval pursuant to 40 CFR 70.4.⁶

V. 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 requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the following provisions that all address the public notice requirements for CAA permitting: Alabama Chapter 335-3-14, "Air Permits" at 335-3-14-.01 -.04, -.05 and -.06 and Chapter 335-3-15 "Synthetic Minor Operating Permits" at 335-3-15-.05 effective December June 9, 2017; Georgia Rule 391-3-1-.02, "Prevention of Significant Deterioration of

⁵ See Letter from Myra C. Reese, SC DHEC, to Trey Glenn, EPA (Sept. 1, 2017) transmitting the SIP revisions and Title V permit revisions received by EPA on September 5, 2017. This letter is included in the docket for this proposed action.

⁶ EPA fully approved South Carolina's Title V Operating Permit program on June 26, 1995 (60 FR 32913).

Air Quality” at 391-3-1-.02(7)(a)1, effective July 20, 2017; and South Carolina Regulation 61-62.5, Standard No. 7, “Prevention of Significant Deterioration” at Sections (q) and (w)(4), effective August 25, 2017. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble for more information).

VI. Proposed Action

EPA is proposing to approve the portions of Alabama’s May 19, 2017, Georgia’s November 29, 2017, and South Carolina’s September 5, 2017, SIP and Title V program revisions addressing the public notice requirements for CAA permitting. EPA has preliminarily concluded that the States’ submissions meet the plan revisions requirements of CAA section 110 and the SIP requirements of 40 CFR 51.161, 51.165, and 51.166, as well as the public notice and revisions requirements of 40 CFR 70.4 and 70.7.

VII. Statutory and Executive Order Reviews

In reviewing SIP and Title V submissions, EPA’s role is to approve such submissions, provided that they meet the criteria of the CAA and EPA’s implementing regulations. These actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions 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);

- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because the actions are not significant under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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 SIPs subject to these proposed actions, with the exception of the South Carolina SIP,

are 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 proposed rules regarding SIPs do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law. With respect to the South Carolina SIP, EPA notes that the Catawba Indian Nation Reservation is located within the boundary of York County, South Carolina, and 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.” Thus, the South Carolina SIP applies to the Catawba Reservation; however, because the proposed action related to South Carolina is merely modifying public notice provisions for certain types of air permits issued by SC DHEC, EPA has preliminarily determined that there are no substantial direct effects on the Catawba Indian Nation. EPA has also preliminarily determined that the proposed action related to South Carolina’s SIP will not impose any substantial direct costs on tribal governments or preempt tribal law.

Furthermore, the proposed rules regarding Title V Operating Permit programs do not have tribal implications because they are not approved to apply to any source of air pollution over which an Indian Tribe has jurisdiction, nor will these proposed rules impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating Permits, Reporting and recordkeeping requirements.

Dated: July 31, 2018.

Onis “Trey” Glenn, III,
Regional Administrator,
Region 4.

[FR Doc. 2018-17207 Filed: 8/9/2018 8:45 am; Publication Date: 8/10/2018]