



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2018-0710; FRL-10004-19-Region 4]

Air Plan Approval; GA; Nonattainment New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision provided by the State of Georgia, through the Georgia Environmental Protection Division (GA EPD) of the Department of Natural Resources, via a letter dated July 2, 2018. Specifically, EPA is approving changes to Georgia's Nonattainment New Source Review (NNSR) permitting rules. This action is being finalized pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

DATES: This rule will be effective **[Insert 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2018-0710. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available

either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can also be reached via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The New Source Review (NSR) program is a preconstruction permitting program that requires certain stationary sources of air pollution to obtain permits prior to beginning construction. The NSR permitting program applies to new construction and to modifications of existing sources. New construction and modifications that emit "regulated NSR pollutants" over certain thresholds are subject to major NSR requirements, while smaller emitting sources and modifications may be subject to minor NSR requirements.

Major NSR permits for sources that are located in attainment or unclassifiable areas are referred to as Prevention of Significant Deterioration (PSD) permits. Major NSR permits for

sources located in nonattainment areas and that emit pollutants above the specified thresholds for which the area is in nonattainment are referred to as NNSR permits.

A new stationary source is subject to major NSR requirements if its potential to emit (PTE) a regulated NSR pollutant exceeds certain emission thresholds. If it exceeds the applicable threshold, the NSR regulations define it as a “major stationary source.” An existing major stationary source triggers major NSR permitting requirements when it undergoes a “major modification,” which occurs when a source undertakes a physical change or change in method of operation (*i.e.*, a “project”) that would result in (1) a significant emissions increase from the project, and (2) a significant net emissions increase from the source. *See, e.g.*, 40 CFR 52.21(b)(2)(i) and (b)(52). Georgia Rule 391-3-1-.03(8) – *Permit Requirements* contains the State’s NNSR permitting requirements and identifies the counties subject to those requirements.

Effective January 6, 1992, EPA designated 13 counties surrounding Atlanta, Georgia, as nonattainment for the 1-hour ozone NAAQS and classified them as a “serious” nonattainment area (hereinafter referred to as the Atlanta 1-hour Ozone Area).¹ *See* 56 FR 56694 (November 6, 1991). Effective January 1, 2004, the Atlanta 1-hour Ozone Area was reclassified as a “severe” nonattainment area. *See* 68 FR 55469 (September 26, 2003). This classification requires, among other things, that a “major source” and a “major stationary source” be defined to include certain sources that emit or have the potential to emit 25 tons or more of nitrogen oxides (NO_x) or volatile organic compounds (VOC) and that emissions offsets apply at a ratio of at least 1.3 or

¹ The Atlanta 1-hour Ozone Area consisted of the following counties: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale. The 1-hour ozone NAAQS was set at 0.12 parts per million (ppm) with attainment defined when the expected number of days per calendar year, with maximum hourly average concentration greater than 0.12 ppm, is equal to or less than one.

1.2:1 (depending on the criteria in CAA section 182(d)(2)).² EPA redesignated the Atlanta 1-hour Ozone Area to attainment for the 1-hour ozone NAAQS, effective June 14, 2005. *See* 70 FR 34660 (June 15, 2005). Effective June 15, 2005, EPA revoked the 1-hour ozone NAAQS. *See* 69 FR 23951 (April 30, 2004) and 70 FR 44470 (August 3, 2005).

Effective June 15, 2004, 20 counties surrounding Atlanta were designated as nonattainment and classified as a “marginal” nonattainment area for the 1997 8-hour ozone NAAQS (hereinafter referred to as the Atlanta 1997 8-hour Ozone Area).³ *See* 69 FR 23858 (April 30, 2004). Effective April 7, 2008, the Atlanta 1997 8-hour Ozone Area was reclassified as a “moderate” nonattainment area. *See* 73 FR 12013 (March 6, 2008). This classification requires, among other things, that a “major source” and a “major stationary source” be defined to include certain sources that emit or have the potential to emit 100 tons or more of NO_x or VOC and that emissions offsets apply at a ratio of at least 1.15:1. The Atlanta 1997 8-hour Ozone Area was redesignated to attainment, effective January 1, 2014. *See* 78 FR 72040 (December 2, 2013). Effective April 6, 2015, EPA revoked the 1997 8-Hour Ozone NAAQS. *See* 80 FR 12264 (March 6, 2015).

Effective July 20, 2012, 15 counties surrounding Atlanta were designated as nonattainment and classified as a “marginal” nonattainment area for the 2008 8-hour ozone NAAQS (hereinafter referred to as the Atlanta 2008 8-hour Ozone Area).⁴ *See* 77 FR 30088

² For ozone, the offset ratio is the ratio of the total emissions reductions of NO_x or VOCs to the total increased emissions of those pollutants.

³ The Atlanta 1997 8-hour Ozone Area consisted of the following counties: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton. The 1997 8-hour ozone NAAQS was set at 0.08 ppm based on an annual fourth-highest daily maximum 8-hour average concentration averaged over three years.

⁴ The Atlanta 2008 8-hour Ozone Area consisted of the following counties: Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, and Rockdale. The 2008

(May 21, 2012). This classification requires, among other things, that a “major source” and a “major stationary source” be defined to include certain sources that emit or have the potential to emit 100 tons or more of NO_x or VOC and that emissions offsets apply at a ratio of at least 1.1:1. The Atlanta 2008 8-hour Ozone Area was redesignated to attainment, effective June 2, 2017. See 82 FR 25523 (June 2, 2017).

Approximately one year later, on June 4, 2018, EPA published a Federal Register document announcing that seven counties surrounding Atlanta were designated as nonattainment and classified as a “marginal” nonattainment area for the 2015 8-hour ozone NAAQS (hereinafter referred to as the Atlanta 2015 8-hour Ozone Area).⁵ See 83 FR 25776 (effective August 3, 2018). As discussed above, the “marginal” classification requires that a “major source” and a “major stationary source” be defined to include certain sources that emit or have the potential to emit 100 tons or more of NO_x or VOC and that emissions offsets apply at a ratio of at least 1.1:1.

Due to the redesignations identified above and the nonattainment designation for the 2015 8-hour ozone NAAQS, the ozone nonattainment area surrounding Atlanta now consists of seven counties – Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett, and Henry. Via a letter dated July 2, 2018, GA EPD provided a SIP revision to EPA to modify the NNSR requirements in Rule 391-3-1-.03(8) – *Permit Requirements*.⁶

8-hour ozone NAAQS is set at 0.075 ppm based on an annual fourth-highest daily maximum 8-hour average concentration averaged over three years.

⁵ The Atlanta 2015 8-hour Ozone Area consists of the following counties: Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett, and Henry. The 2015 8-hour ozone NAAQS is set at 0.070 ppm based on an annual fourth-highest daily maximum 8-hour average concentration averaged over three years.

⁶ EPA received the submittal on July 6, 2018. Georgia’s cover letter also requested revision to Rule 391-3-1-.03(10) – *Title V Operating Permits*. However, EPA is not acting on that revision because Rule 391-3-1-.03(10) is not part of the SIP.

See EPA's notice of proposed rulemaking (NPRM) published on September 9, 2019 (84 FR 47213) for further detail on the changes made in the July 2, 2018 submission. Comments were due on October 9, 2019, and EPA received no comments on the NPRM. EPA is approving the changes to Georgia's Rule 391-3-1-.03(8) because these changes are consistent with the CAA.

II. Incorporation by Reference

In this document, 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 Georgia Rule 391-3-1-.03(8) – *Permit Requirements*, which revises the State's permit rules, state effective June 18, 2018. 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). Therefore, these materials have been approved by EPA for inclusion in the SIP, 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 in the next update to the SIP compilation.⁷

III. Final Action

EPA is approving the aforementioned changes to Georgia's SIP, submitted in a letter dated July 2, 2018, that make revisions to Rule 391-3-1-.03(8) – *Permit Requirements*. EPA views this change as being consistent with the CAA.

⁷ See 62 FR 27968 (May 22, 1997).

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. 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Ozone, Volatile organic compounds, Nitrogen oxides.

Dated: January 2, 2020.

Blake M. Ashbee,
Acting Regional Administrator,
Region 4.

For the reasons discussed in the preamble, 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 L - Georgia

2. Section 52.570(c) is amended under the heading Permits by revising the entry for “391-3-1-.03(8)” to read as follows:

§ 52.570 Identification of plan.

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
391-3-1-.03	Permits			
**	**	*	*	*
391-3-1-.03(8)	Permit Requirements	6/18/2018	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Except paragraph (e), approved on 11/22/10 with a state-effective date of 7/25/07.
**	**	*	*	*

[FR Doc. 2020-00326 Filed: 1/15/2020 8:45 am; Publication Date: 1/16/2020]