



40 CFR Part 52

[EPA-R04-OAR-2020-0187; FRL- 10016-71-Region 4]

Air Plan Approval; North Carolina; Revisions to Exclusionary Rules and Permit Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of revisions to a State Implementation Plan (SIP) submitted by the State of North Carolina through the North Carolina Department of Environmental Quality, Division of Air Quality (DAQ), on September 18, 2009, and July 10, 2019. These SIP revisions seek to modify the State's rules that define the categories of facilities that are exempted from Title V permitting requirements by limiting their potential emissions ("exclusionary rules") and the categories of facilities that are exempted from the State's rules that address the permitting requirements for non-Title V facilities ("permit exemption rules"). EPA is proposing to approve this revision 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-2020-0187 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: Pearlene Williams, 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. Ms. Williams can be reached via telephone at (404) 562-9144, or via electronic mail at williams.pearlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Submittal – September 18, 2009

On September 18, 2009, DAQ submitted revisions to 15A North Carolina Administrative Code (NCAC) Subchapter 02Q, Section .0902, *Temporary Crushers*,¹ for review and approval into the SIP. These changes are part of North Carolina's permit exemption rules at Section .0900 that define the categories of facilities that are exempted from the State's regulations that address the permitting requirements for non-Title V facilities. These changes are discussed in more detail in Section II.

B. Submittal – July 10, 2019

On July 10, 2019, DAQ submitted SIP revisions to EPA with changes to the following rules in 15A NCAC 02Q Section .0800 that define the categories of facilities that are exempted from Title V permitting requirements by limiting their potential emissions: Section .0801, *Purpose and Scope*; Section .0802, *Gasoline Service Stations and Dispensing Facilities*; Section .0803, *Coating, Solvent Cleaning, Graphic Arts Operations*; Section .0804, *Dry Cleaning*

¹ DAQ supplemented the September 18, 2009, submittal in a letter dated June 7, 2019, which includes the correct redline/strikeout of the regulatory changes and final regulations that became state effective on January 1, 2009. This letter is available in the docket for this proposed rulemaking.

Facilities; Section .0805, *Grain Elevators*; Section .0806, *Cotton Gins*; and Section .0807, *Emergency Generators*; and Section .0809, *Concrete Batch Plants*.² The July 10, 2019, SIP revisions also contain changes to the following permit exemption rules: Section .0901, *Purpose and Scope*; and Section .0902, *Temporary Crushers*. These changes are discussed in more detail in Section II.

II. Analysis of the State Submittals

The revisions that are the subject of this proposed rulemaking make changes to exclusionary rules and permit exemption rules under Subchapter 2Q³ of the North Carolina SIP. These changes revise the recordkeeping and reporting requirements of the exclusionary rules; remove Section .0809, *Concrete Batch Plants*; revise the provisions of Section .0902, *Temporary Crushers*; and revise language and reformat the regulatory citations contained in the exclusionary and permit exemption rules. Detailed descriptions of the changes are provided below.

Section .0801, *Purpose and Scope*, is revised to modify language and reformat the regulatory citations of this section. In addition, the recordkeeping and reporting requirement exemptions are removed. New paragraphs have been created using the existing text of this section. The language changes in this section pertain to updates to subject-verb agreements and word tense. EPA is proposing to approve these changes to these rules because they are grammatical and organizational in nature and therefore do not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act.

North Carolina submitted changes to several rules within Section .0800 which do not alter the meaning or make significant changes to those rules. Specifically, the following rules are submitted with changes to update a cross-reference to where the “responsible official” at a facility is defined in the North Carolina regulations, reformat regulatory citations, make minor

² The State submitted the revisions following the readoption of several air regulations. These include: .0801, .0802, .0803, .0804, .0805, .0806, .0807, .0809, .0901, and .0902, and were submitted pursuant to North Carolina’s 10-year regulatory readoption process at North Carolina General Statute 150B-21.3A.

³ In the table of North Carolina regulations federally approved into the SIP at 40 CFR 52.1770(c), 15A NCAC 02Q is referred to as “Subchapter 2Q Air Quality Permits.”

language edits, and correct typographical errors, where applicable: Sections .0802, *Gasoline Service Stations and Dispensing Facilities*;⁴ .0803, *Coating, Solvent Cleaning*;⁵ *Graphic Arts Operations*; .0804, *Dry Cleaning Facilities*; .0805, *Grain Elevators*; .0806, *Cotton Gins*; .0807, *Emergency Generators*; and Section .0901, *Purpose and Scope*. EPA is proposing to approve these changes to these rules because they do not alter the meaning of the regulations....

DAQ has repealed Section .0809, *Concrete Batch Plans* and is proposing to remove it from the SIP. This rule covered certain sizes of concrete batch plants that use fabric filters or equivalently effective control devices to control particulate emissions to limit production such that the potential to emit (PTE) would remain below applicable Title V thresholds as determined by the State. Under the rule, these facilities were not required to obtain major source operating permits pursuant to 02Q .0500, *Title V Procedures*. Section .0809 functioned as a flexible permitting mechanism to cover certain types of concrete batch plants that wished to avoid Title V permitting. Sources previously covered by this rule can elect to obtain synthetic minor operating permits pursuant to 02Q .0315, *Synthetic Minor Facilities*, or otherwise have the option to obtain a Title V permit pursuant to 02Q .0500 if their PTE is above the Title V thresholds. EPA has preliminarily determined that repealing Section .0809 does not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act because it simply removes a mechanism sources could use to avoid Title V permitting. Accordingly, EPA is proposing to remove Section .0809 from the SIP.

Section .0902, *Temporary Crushers*, is revised with edits from the September 18, 2009,⁶

⁴ 15 NCAC 02Q .0802(c) includes a typographical error that inadvertently changed the word “for” to “form” instead of the correct word “from.”

⁵ EPA previously approved changes to .0803, *Coating Solvent Cleaning*, state effective April 1, 2001 (as transmitted in an April 16, 2001, SIP revision), on August 8, 2002 (67 FR 51461). EPA inadvertently reverted the state effective date included in Table (c) of 40 CFR 52.1770 to April 1, 1999, in a subsequent action on October 22, 2002 (67 FR 64990). The April 1, 2001 change to the reporting date in paragraph (i), now recodified as paragraph (j), is included and superseded in the April 1, 2018, state effective version of 15A NCAC 02Q .0803.

⁶ EPA has already taken action on the following portions of the September 18, 2009 submittal: 02D .0901 - approved at 78 FR 27065 (May 9, 2013); 02D .0902 - approved at 78 FR 44890 (July 25, 2013); 02D .0909 - approved at 78 FR 58184 (September 23, 2013); and 02Q .0304 - approved at 85 FR 43461 (June 24, 2020). Rules 02D .0953 and .0954 were repealed, state effective September 18, 2009, and removed from the SIP at 78 FR 58184 (September 23, 2013). DAQ withdrew the following portions of the September 18, 2009 submittal: 02D .0521

and July 10, 2019, submittals that include clarifying edits, changes to formatting, minor modifications to language, correction of typographical errors, and renumbering.⁷ First, the permit exemption regarding temporary crushers is revised to remove language related to the diesel fuel burning equipment at these facilities. Previously, to qualify for the exemption from 02Q .0300, *Construction and Operating Permits*, temporary crushers that used a diesel-fired generator or diesel engine to drive the crusher could not burn more than 17,000 gallons of diesel at the facility. North Carolina explains that removing this language is necessary because DAQ does not regulate engines such as these, which are subject to Title II of the CAA, *Emissions Standards for Moving Sources*. Any associated engines at such temporary sources would be defined as portable and, as such, not considered part of a stationary source. Therefore, the effect of removing these engines from the rule exempting temporary crushers is clarifying in nature and does not alter existing permitting requirements. The edits also add a new paragraph (i), which requires an owner or operator of a crusher to apply for and receive an air quality permit before beginning operations (should they plan to operate for more than twelve months). Other revisions include updated cross-references to applicable rules and updated recordkeeping and reporting requirements to reflect the removal of these engines from the exemption. Remaining edits include updates to numbering, minor changes to existing language, and correction of typographical errors. EPA is proposing to approve these minor and clarifying changes to Section .0902 because they do not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act.

III. Incorporation by Reference

(withdrawn June 7, 2019) and 02D .0952 (withdrawn November 30, 2012). Additionally, DAQ withdrew paragraph (d) of 02Q .0902 (as renumbered from paragraph (c)) in the September 18, 2009, submittal and carried forward in the July 10, 2019, submittal, from EPA consideration in a letter dated on June 1, 2020. The June 1, 2020, withdrawal letter is available in the docket for this proposed rulemaking.

⁷ Except for the change to Section .0902(d) in the July 10, 2019 and September 18, 2009 SIP revisions which was withdrawn from EPA consideration in a letter dated June 1, 2020. Additionally, the withdrawal of paragraph (d) from section 02Q .0902, leaves the section with two paragraphs (c), one state effective on January 1, 2001 and one state effective on January 1, 2009. DAQ plans to submit revisions to address the two paragraphs (c) in a future submission.

In this notice, 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 sections of 15A NCAC Subchapter 02Q with a state-effective date of April 1, 2018: Section .0801, *Purpose and Scope*; Section .0802, *Gasoline Service Stations and Dispensing Facilities*; Section .0803, *Coating, Solvent Cleaning, Graphic Arts Operations*; Section .0804, *Dry Cleaning Facilities*; Section .0805, *Grain Elevators*; Section .0806, *Cotton Gins*; Section .0807, *Emergency Generators*; Section .0901, *Purpose and Scope* and Section .0902, *Temporary Crushers* (with the exception of .0902(d)). EPA is also proposing to remove North Carolina regulation 15A NCAC Subchapter 02Q Section .0809, *Concrete Batch Plants*, from the North Carolina SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51. These changes are proposed to revise the recordkeeping and reporting requirements of the permitting exclusionary rules, remove the “Concrete Batch Plants” regulation, revise language, and reformat the regulatory citations contained in these regulations. 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).

IV. Proposed Action

EPA is proposing to approve the changes described above to the North Carolina SIP submitted by the State of North Carolina on September 18, 2009, and July 10, 2019. The changes under Subchapter 02Q Section .0801, *Purpose and Scope*; Section .0802, *Gasoline Service Stations and Dispensing Facilities*; Section .0803, *Coating, Solvent Cleaning, Graphic Arts Operations*; Section .0804, *Dry Cleaning Facilities*; Section .0805, *Grain Elevators*; Section .0806, *Cotton Gins*; Section .0807, *Emergency Generators*; Section .0901, *Purpose and Scope*; and Section .0902, *Temporary Crushers*, are proposed to revise the recordkeeping and reporting requirements of the permitting exclusionary rules, remove Section .0809, the *Concrete Batch*

Plants regulation, revise language, and reformat the regulatory citations contained in these regulations. The proposed changes are consistent with the CAA.

V. 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 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);
- 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.

List of Subjects in 40 CFR Part 52

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

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

Dated: November 16, 2020.

Mary Walker,
Regional Administrator,
Region 4.

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