



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2020-0445; FRL-8779-01-R4]

Air Plan Approval; SC; Revisions to Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC or Department), on April 24, 2020. The SIP revision updates the definition of “Spec. Oil (Specification Oil)” and makes minor updates to formatting and numbering. EPA is proposing to approve this revision pursuant to the Clean Air Act (CAA or Act) and implementing federal regulations.

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-2020-0445 at 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 a 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 www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, 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) 562-9088. Ms. Bell can also be reached via electronic mail at bell.tiereny@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What is EPA Proposing?

On April 24, 2020, SC DHEC submitted a SIP revision to EPA for approval that includes changes to South Carolina Regulation 61-62.1, Section I – *Definitions*, including a revised definition of “Spec. Oil (Specification Oil)” and updates to numbering and formatting within this regulation.¹ EPA is proposing to approve these changes pursuant to the CAA.

II. Background

SC DHEC has requested incorporation of several changes to South Carolina Regulation 61-62.1, Section I – *Definitions* into South Carolina’s SIP. First, SC DHEC’s SIP revision proposes minor updates to numbering and formatting within South Carolina Regulation 61-62.1, Section I – *Definitions*.

Second, SC DHEC proposes to revise the definition of “Spec. Oil (Specification Oil)” at Paragraph 97(a) within the definition of “Used Oil.” Specifically, the revised definition of “Spec. Oil” would remove the phrase “Nickel – 120 ppm [parts per million] maximum,” thus eliminating the nickel specification for “Spec. Oil.” In the South Carolina SIP’s definition of

¹ On April 24, 2020, SC DHEC also submitted to EPA SIP revisions to Regulations 61-62.1, Section II – *Permit Requirements*; 61-62.1, Section III – *Emission Inventory and Emissions Statement*; 61-62.1, Section IV – *Source Tests*; 61-62.1, Section V – *Credible Emissions*; 61-62.5, Standard No. 2 – *Ambient Air Quality Standards*; 61-62.5, Standard 5.2 – *Control of Oxides of Nitrogen (NO_x)*; 61-62.5, Standard 7 – *Prevention of Significant Deterioration*; and 61-62.5, Standard 7.1 – *Nonattainment New Source Review (NSR)*. EPA will address these SIP revisions in separate actions.

“Used Oil,” “Spec. Oil” and “Non-Spec. Oil”² are listed as “[t]wo (2) types” of “used oil.”

Notably, the terms “Spec. Oil” and “Specification Oil” do not currently appear anywhere else in South Carolina’s SIP outside of the definition of “Used Oil.”

SC DHEC has indicated that the purpose of its requested change to the definition of “Spec. Oil” in South Carolina Regulation 61-62.1, Section I – *Definitions* is to maintain a consistent definition of spec. oil across South Carolina’s various regulatory programs. Specifications for spec. oil are also contained in 40 CFR 279.11 and in South Carolina Rule 61-107-.279.11, both of which implement the used oil provisions of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 *et seq.* Neither 40 CFR 279.11 nor South Carolina Rule 61-107-.279.11 include a specification for nickel in those regulations’ respective used oil specifications and, therefore, South Carolina’s proposed SIP revision would make the definition of “Spec. Oil” in South Carolina Regulation 61-62.1, Section I – *Definitions* consistent with the used oil specifications in these other regulations.

III. Analysis of State’s Submittal

As mentioned above, the April 24, 2020, SIP revision includes a change to the definition of “Spec. Oil (Specification Oil)” within the definition of “Used Oil” in South Carolina Regulation 61-62.1, Section I – *Definitions*. Because this change would remove the specification for nickel in “Spec. Oil,” it would allow unlimited nickel content in “Spec. Oil.”

Under section 110(l) of the CAA, EPA cannot approve a SIP revision “if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.” EPA finds that SC DHEC’s proposed updated definition of “Spec. Oil,” which

² “Non-Spec. Oil (Off Spec Oil)” is defined as “[u]sed oil that does not meet the specification above.” S.C. Code Regs. 61-62.1 § I (97)(b). Therefore, used oil that does not meet the definition of “Spec. Oil” is still considered “Used Oil.” *Id.*

removes the specification for nickel in “Spec. Oil,” is approvable under section 110(l) for two reasons. First, this proposed revision will not interfere with the NAAQS or any other CAA requirement because the revision has no practical effect. “Spec. Oil” does not appear anywhere in South Carolina’s SIP other than in the definition of “Used Oil” itself; the definition of “Used Oil” describes “Spec. Oil” as just one of “[t]wo (2) types” of “used oil”; and oil that would not meet the definition of “Spec. Oil” in the current SIP-approved version of the rule due solely to nickel concentrations above 120 ppm would still be considered “Used Oil” under the regulation.³ Thus, although the term “Used Oil” appears elsewhere in South Carolina’s SIP (such as in the definitions of Waste and Municipal Solid Waste), changing the definition of “Spec. Oil” will have no practical effect, and therefore, satisfies section 110(l).⁴

Second, SC DHEC’s proposed removal of the nickel specification from the definition of “Spec. Oil” is not inconsistent with CAA section 129 (relating to solid waste combustion) and is consistent with interrelated solid waste rules codified at 40 CFR Parts 241 and 279.⁵ The referenced solid waste rules generally relate to the status of used oil when used oil is burned for energy recovery. More specifically, under 40 CFR 241.2, “used oil which meets the specifications outlined in 40 CFR 279.11” are “[t]raditional fuels” and are therefore not solid waste subject to the requirements of CAA section 129. *See generally* 76 FR 15456, 15502-06 (March 21, 2011). South Carolina’s revised definition of “Spec. Oil” is consistent with these solid waste rules and, specifically, is consistent with the specifications for used oil in 40 CFR 279.11, which does not include a nickel specification. Thus, South Carolina’s proposed rule will not interfere with section 129 of the CAA or any plan promulgated under section 129 of the CAA.

IV. Incorporation by Reference

³ See footnote 2.

⁴ Additionally, South Carolina is currently attaining the NAAQS for all criteria pollutants.

⁵ These rules are interrelated because CAA Section 129 specifically references the “Solid Waste Disposal Act [42 U.S.C. 6901 et seq.],” including the definition of “solid waste” promulgated pursuant to that act. *See* CAA § 129(g)(6).

In this document, 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's Regulation 61-62.1, *Definitions and General Requirements*, Section I – *Definitions*, state effective on April 24, 2020. 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).

V. Proposed Action

EPA is proposing to approve and incorporate into South Carolina's SIP the aforementioned changes to South Carolina Regulation 61-62.1, Section I – *Definitions*, state effective on April 24, 2020. EPA has determined that these revisions meet the applicable requirements of Section 110 of the CAA and the applicable regulatory requirements at 40 CFR part 51.

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. 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, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 22, 2021.

John Blevins,
Acting Regional Administrator,
Region 4.

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