



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2024-0573; FRL-12459-02-R2]

### **Air Plan Approval; New Jersey; Permits and Certificates for Minor Facilities (and Major facilities Without an Operating Permit), and Air Emission Control and Permitting Exemptions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to New Jersey's State Implementation Plan (SIP), submitted by the New Jersey Department of Environmental Protection (NJDEP), for the purposes of incorporating regulations concerning permits and certificates for minor source facilities, and major source facilities without an operating permit. The intended effect of the NJDEP's revisions to the SIP is to regulate the construction and modification of stationary sources with adequate requirements to ensure that the National Ambient Air Quality Standards (NAAQS) are satisfied. The NJDEP's revisions will strengthen the SIP by updating the Federal air permitting program to conform with the State regulations that were in effect at the time of the SIP submission, which will ultimately better serve the regulated community and help to protect the quality of air in the State. The EPA proposed to approve this rule on December 17, 2024, and received no comments.

**DATES:** This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2024-0573. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Controlled Unclassified Information (CUI) (formally referred to as Confidential Business Information (CBI)) 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 electronically through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Ferreira, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3127, or by email at [ferreira.nicholas@epa.gov](mailto:ferreira.nicholas@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. What is the background for this action?**

On December 17, 2024, the EPA published a Notice of Proposed Rulemaking that proposed to approve SIP revisions submitted by the State of New Jersey, through the NJDEP, on February 24, 2014, and August 23, 2018 (*see* 89 FR 102034).<sup>1</sup> New Jersey’s revisions consisted of new provisions and amendments to New Jersey Administrative Code (*i.e.*, N.J.A.C.), Title 7, Chapter 27 (*i.e.*, 7:27), subchapter 8, “Permits and Certificates for minor facilities (and major facilities without an operating permit)”

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<sup>1</sup> The revisions submitted on February 24, 2014, and August 23, 2018, became State effective on September 19, 2011, and January 16, 2018, respectively.

(hereinafter referred to as “subchapter 8”). The last major EPA approval of subchapter 8 into the New Jersey SIP occurred in 1986. The EPA approved additional amendments to subchapter 8, made by the NJDEP, into New Jersey’s SIP in 1994, 1997, and 2023. Therefore, the NJDEP’s 2014 and 2018 submittals are intended to strengthen New Jersey’s SIP by conforming it with the subchapter 8 State regulations that the State had in effect at the time of submission to the EPA.

Section 110(a)(2)(C) of the Clean Air Act (CAA) requires States to include in their SIPs, programs that regulate the construction and modification of stationary sources with adequate requirements to ensure that the NAAQS are achieved. New Jersey submitted the February 24, 2014, and August 23, 2018, SIP revisions to fulfill this requirement of the CAA as it applies to minor stationary sources, and major source facilities without an operating permit.

Under section 110(a) of the CAA, SIP rules must be enforceable, and the EPA must not approve a revision that interferes with any applicable requirement concerning attainment and reasonable further progress (*see* CAA section 110(l)). The EPA evaluates minor new source review programs included as SIP submittals based on the criteria in subpart I of 40 CFR part 51 and new major sources and major modifications under 40 CFR 51.165 and 51.166 and part C and D of title I of the CAA. The EPA has determined that the rule revisions that New Jersey submitted, are mostly consistent with the relevant policy and guidance regarding the enforceability of the revisions. Additionally, the EPA has determined that the rule revisions comply with the requirement under CAA section 110(l), that the EPA may not approve a revision that could interfere with any applicable requirement concerning attainment and reasonable further progress and meet the criteria in subpart I of 40 CFR 51.160 through 51.164.

Therefore, apart from five odor provisions<sup>2</sup> and one affirmative defense provision,<sup>3</sup> the EPA is finalizing its approval of New Jersey's SIP strengthening amendments. The specific details of New Jersey's SIP submittals and the rationale for the EPA's approval action are explained in Section II. "Summary of the SIP revision and the EPA's Analysis," of the EPA's proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA's December 17, 2024, proposed rulemaking (89 FR 102034).

## **II. What comments were received in response to the EPA's proposed action?**

The EPA provided a 30-day review and comment period for the December 17, 2024, proposed rulemaking. The comment period ended on January 16, 2025, and the EPA received no comments on the proposed action; therefore, this action is being finalized as the EPA proposed.

## **III. What action is the EPA taking?**

The EPA is approving New Jersey's revisions to N.J.A.C. 7:27-8, "Permits and Certificates for Minor Facilities (and Major Facilities without an Operating Permit)," which will incorporate regulations under N.J.A.C. 7:27 8.2 through 8.28 (except for five odor provisions and one affirmative defense provision) into the New Jersey SIP, that had State effective dates of September 19, 2011, and January 16, 2018.

## **IV. Incorporation by Reference**

In this document, the EPA is finalizing regulatory text that includes incorporation by reference as described in Section I of this preamble. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference revisions to N.J.A.C. 7:27-8, "Permits and Certificates for Minor Facilities (and Major Facilities without an

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<sup>2</sup> The NJDEP acknowledged within the February 24, 2014, cover letter that was included with its SIP submittal to the EPA, that these provisions would not be incorporated by the EPA into the federally enforceable SIP.

<sup>3</sup> On October 7, 2024, via official letter, the NJDEP formally requested to withdraw the affirmative defense provision at N.J.A.C. 7:27-8.3(n) from its February 24, 2014, and August 23, 2018, submittals to the EPA.

Operating Permit),” (except for N.J.A.C. 7:27-8.2(d)(3)(ii)(2), N.J.A.C. 7:27-8.2(e)(2)(ii), N.J.A.C. 7:27-8.3(j), N.J.A.C. 7:27-8.3(n), N.J.A.C. 7:27-8.4(k)(2), and N.J.A.C. 7:27-8.4(q));<sup>4</sup> as discussed in Section I , “What is the background for this action?” of this preamble and Section II, “Summary of the SIP Revision and the EPA’s Analysis,” in the EPA’s December 17, 2024 proposed rulemaking. These documents are available in the docket of this rulemaking through *www.regulations.gov*. Therefore, these materials are approved by the EPA for inclusion in the SIP, are incorporated by reference by the 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 the EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>5</sup>

## **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve State choices, provided they meet the criteria of the Clean Air Act. Accordingly, 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);
- 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.*);

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<sup>4</sup> N.J.A.C. 7:27-8.1, “Definitions” was previously approved into the State’s Federally approved SIP on November 28, 2023. *See* 88 FR 83036.

<sup>5</sup> 62 FR 27968 (May 22, 1997).

- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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 Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the 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, and it will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, 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 AFTER DATE OF PUBLICATION 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, Ammonia, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

**Michael Martucci,**  
*Regional Administrator,*  
*Region 2.*

For the reasons set forth 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 FF—New Jersey**

2. In §52.1570 the table in paragraph (c), is amended as follows:

- a. Remove the entries “Title 7, Chapter 27, Section 8.1,” “Title 7, Chapter 27, Section 8.2,” and “Title 7, Chapter 27, Section 8.11.”
- b. Revise the entry for “Title 7, Chapter 27, Subchapter 8” after the entry “Title 7, Chapter 27, Subchapter 7.2(k).”

The revision reads as follows:

**§52.1570 Identification of plan.**

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(c) \* \* \*

**EPA-APPROVED NEW JERSEY STATE REGULATIONS AND LAWS**

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Comments</b>
* * * * *				

Title 7, Chapter 27, Subchapter 8	Permits and Certificates for minor facilities (and major facilities without an operating permit)	August 23, 2018	<b>[insert date of publication in the Federal Register], [insert first page of Federal Register citation].</b>	<ul style="list-style-type: none"> <li>• Section 8.1 was previously approved into the State’s Federally approved SIP on November 28, 2023 (88 FR 83036).</li> <li>• The following provisions are not approved: (1) five odor provisions at 8.2(d)(3)(ii)(2), 8.2(e)(2)(ii), 8.3(j), 8.4(k)(2), and 8.4(q); as well as (2) an affirmative defense provision at 8.3(n).</li> </ul>
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