



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2018-0073; FRL-9984-11-Region 4]

### Air Plan Approval;

### South Carolina: Revisions to Prevention of Significant Deterioration Rules

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve portions of 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), on September 5, 2017, that seek to revise certain New Source Review (NSR) regulations regarding the Prevention of Significant Deterioration (PSD) permitting program. EPA is proposing this action 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-2018-0073 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:** D. Brad Akers, Air Regulatory Management 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. Mr. Akers can be reached via telephone at (404) 562-9089 or via electronic mail at [akers.brad@epa.gov](mailto:akers.brad@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. What Action Is EPA Taking Today?**

On September 5, 2017, SC DHEC submitted a SIP revision to EPA for approval that involves changes to South Carolina’s NSR permitting regulations to make them consistent with federal requirements for NSR permitting, correct typographical errors, make internal references consistent, and update public noticing procedures.<sup>1</sup> These changes include revisions to NSR public notice requirements in SC DHEC Regulation 61-62.5, Standard No. 7 - “Prevention of

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<sup>1</sup> Also on September 5, 2017, South Carolina submitted separate SIP revisions with: changes to Regulation 61-62.1, Section I - “Definitions” and Regulation 61-62.5, Standard No. 5.2 - “Control of Oxides of Nitrogen (NOx);” the adoption of Regulation 61-62.97 - “Cross State Air Pollution Rule (CSAPR) Trading Program;” and changes to the regional haze SIP. The SIP revision related to Regulation 61-62.97 (CSAPR) was previously approved on October 13, 2017 (82 FR 47939). EPA will address the remaining SIP revisions in separate actions.

Significant Deterioration (PSD) at sections (q) and (w)(4) to address the federal rule entitled “Revisions to Public Notice Provisions in Clean Air Act Permitting Programs,” Final Rule, 81 FR 71613 (October 18, 2016) (also referred to as the e-Notice Rule). In this proposed action, EPA is approving the SIP revision that makes changes to South Carolina’s NSR regulations at SC DHEC Regulation 61-62.5, Standard No. 7 which applies to the construction or modification of any major stationary source in areas designated as attainment or unclassifiable as required by part C of title I of the CAA, with the exception of the portions of the SIP revision related to the e-Notice Rule. EPA has addressed the e-notice portions of the SIP revision in a separate proposed action. *See* 83 FR 39638 (August 10, 2018).

South Carolina’s PSD regulations at Regulation 61-62.5, Standard No. 7, were originally approved into the SIP on June 10, 1982 (47 FR 6017), with periodic revisions approved through August 10, 2017 (82 FR 37299). EPA is proposing to approve changes submitted in South Carolina’s September 5, 2017, SIP revision to modify the PSD regulations to make minor edits for internal consistency and to adopt changes for consistency with EPA’s 2016 permit rescission rule entitled “Rescission of Preconstruction Permits Issued Under the Clean Air Act” Final Rule, 81 FR 78043 (November 7, 2016) (hereinafter referred to as the Permit Rescission Rule).

## **II. Background**

This proposed action seeks to revise South Carolina’s PSD regulations in the SIP as described in Section III, below. Many of these changes are administrative in nature, including updating internal references and correcting typographical errors. The September 5, 2017, SIP revision also makes changes to the PSD regulations to adopt corrective provisions from EPA’s Permit Rescission Rule.

On November 7, 2016, EPA published the Permit Rescission Rule, which addressed the rescission of preconstruction permits for PSD. The rule made the following changes to the Agency's PSD rule at 40 CFR 52.21: 1) removed a date restriction that only allowed the rescission of PSD permits issued under PSD rules in effect as of July 30, 1987; 2) clarified that permit rescission is not automatic; and 3) corrected an outdated cross-reference. EPA removed the July 30, 1987 date restriction from the federal rule because there are circumstances where it may be appropriate to rescind PSD permits issued under rules in effect after this date pursuant to the criteria in 40 CFR 52.21(w)(3) of the Permit Rescission Rule. For additional information on provisions in the Permit Rescission Rule, see 81 FR 78043 (November 7, 2016).

### **III. Analysis of the State's September 5, 2017, Submittal**

The September 5, 2017, SIP revision makes several changes to Regulation 61-62.5, Standard No. 7 at section (w) – entitled “Permit rescission” – to be consistent with the federal provisions for rescinding PSD permits.<sup>2</sup> Paragraph (w)(1) currently states that PSD permits issued pursuant to Standard No. 7 remain in effect until they expire or are rescinded. This subparagraph is revised in South Carolina's submittal to clarify that section (w) is the only provision under which permit rescission is allowed. Next, paragraph (w)(2) is revised to remove the date restriction discussed in Section II, above, that limits rescission to PSD permits issued under PSD rules in effect on or before July 30, 1987. South Carolina's revised language is consistent with the federal Permit Rescission Rule, allowing for permit rescission if the permit meets the requirement of paragraph (w)(3). Finally, paragraph (w)(3) is revised to change the

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<sup>2</sup> South Carolina also revised 61-62.5, Standard No. 7 at paragraph (w)(4) to address EPA's eNotice Rule. As discussed above, EPA proposed to approve this change in a separate proposed action. *See* 83 FR 39638 (August 10, 2018).

word “shall” to “may” to clarify that this provision does not create a mandatory duty for the State. This change is consistent with the Permit Rescission Rule at 40 CFR 52.21(w)(3).

The September 5, 2017, SIP revision also revises other paragraphs in Regulation 61-62.5, Standard No. 7 for consistency in formatting, to correct internal references, and to correct typographical errors. Section (b) is modified at paragraph (34), subparagraph (vi), to correct a typographical error in the definition of “Net emissions increase.” Next, sections (w), (aa), and (bb) are revised to be in bold font for internal consistency. Finally, Standard No. 7 is revised to make internal references and formatting consistent by making changes in section (aa) at (aa)(1)(i), (aa)(9), (aa)(11)(i), and (aa)(14)(i). EPA preliminarily finds that South Carolina’s revised rules are consistent with federal requirements and CAA section 110.

#### **IV. Incorporation by Reference**

In this document, 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 SC DHEC regulatory paragraphs identified above in Section III within SC DHEC Regulation 61-62.5, Standard No. 7, entitled “Prevention of Significant Deterioration (PSD),” state effective on August 25, 2017. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://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 the changes to the SIP identified in Section III, above, because they are consistent with the CAA and its implementing regulations.

## **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 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).

In addition, this proposed approval for the State of 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 boundary of York County, 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.

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

Dated: September 10, 2018.

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