



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2017-0454; FRL-9993-97-Region 4]

#### Air Plan Approval; NC; Permitting Revisions

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a portion of a revision to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina through the North Carolina Department of Environmental Quality (formerly the North Carolina Department of Environment and Natural Resources (NCDENR)), Division of Air Quality, through a letter dated March 24, 2006. The revision includes changes to permitting regulations. The revision is part of North Carolina's strategy to meet and maintain the national ambient air quality standards (NAAQS). This action is being taken pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

**DATES:** This rule is effective [insert date 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-2017-0454. All documents in the docket are listed on the [www.regulations.gov](http://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](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division (formerly the Air, Pesticides and Toxics Management 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:** Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8966. Mr. Febres can also be reached via electronic mail at [febres-martinez.andres@epa.gov](mailto:febres-martinez.andres@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Through a letter dated March 24, 2006, the State of North Carolina, through NCDENR, submitted several changes to the North Carolina SIP for EPA approval. EPA is taking final action to approve changes to the following regulations: 15A North Carolina Administrative Code (NCAC) 02Q Sections .0101, *Required Air Quality Permits*, and .0301, *Applicability*.<sup>1, 2</sup> EPA has taken, will take, or will not take separate action on all other changes submitted on March 24, 2006.<sup>3</sup>

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<sup>1</sup> EPA received this SIP submittal on April 4, 2006.

<sup>2</sup> 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."

<sup>3</sup> On July 18, 2017, EPA took direct final action on changes to 15A NCAC 02D Sections .0101, .0103, .0810, .1902, .1903, and 15A NCAC 2Q Sections .0103, .0105, .0304, .0305, .0808 and .0810. See 82 FR 32767. EPA will be taking separate action on changes to 15A NCAC 02D Sections .1904 and .2001. EPA will not be taking action on

Specifically, 2Q Sections .0101, *Required Air Quality Permits*, and .0301, *Applicability*, have been amended to reflect the changes to the North Carolina General Statutes regarding construction to allow additional preconstruction activities for minor sources, and an exception has been added in both sections to allow certain preconstruction activities prior to obtaining a final minor construction permit. 2Q Section .0101 has also been revised to remove a prohibition on entering into irrevocable contracts for the construction, operation, or modification of air cleaning devices. EPA has determined that allowing the foregoing changes are consistent with the requirements of CAA sections 110(a)(2)(C) and 110(I) and federal regulations at 40 CFR 51.160–51.164.

In a notice of proposed rulemaking (NPRM) published on February 14, 2019 (84 FR 4019), EPA proposed to approve the aforementioned revisions to the North Carolina SIP. The NPRM provides additional detail regarding the background and rationale for EPA’s action. Comments on the NPRM were due on or before March 18, 2019. EPA received no relevant comments on the proposed action.

## **II. Incorporation by Reference**

In this rule, 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 regulations under Subchapter 2Q, *Air Quality Permits*. Specifically, EPA is incorporating Section .0101, *Required Air Quality Permits*, under .0100, *General Provisions*, and Section .0301, *Applicability*, under .0300, *Construction and Operating Permits*, which both have a state effective date of December 1, 2005. EPA has made, and will continue to make, these materials

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changes to 15A NCAC 2D Section .1201 because this rule pertains to incinerators and addresses emission guidelines under CAA sections 111(d), 129, and 40 CFR part 60 and is not a part of the federally-approved SIP. EPA will also not be taking action on changes to Regulation 15A NCAC 02D Section .1401, because these were withdrawn by NCDEQ on June 5, 2017. Finally, changes to two regulations, 15A NCAC 02Q Sections .0508 and .0523, will not be acted on because these rules are part of North Carolina’s title V permitting program and are not a part of the SIP.

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). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, 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.<sup>4</sup>

### **III. Final Action**

EPA is taking final action to approve revisions to 15A NCAC 02Q Section .0101, *Required Air Quality Permits*, and Section .0301, *Applicability*, in the North Carolina SIP submitted by the State of North Carolina on March 24, 2006, pursuant to section 110 because these changes are not inconsistent with the CAA and EPA’s regulations. Changes to the other sections in this submission have been or will be processed in a separate action, as appropriate, for approval into the North Carolina SIP.

### **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

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<sup>4</sup> *See* 62 FR 27968 (May 22, 1997).

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 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 10, 2019.

Mary S. Walker,  
Acting Regional Administrator,  
Region 4.

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 II-North Carolina**

2. In §52.1770, paragraph (c)(1) is amended by revising the entries “Section .0101” and “Section .0301” to read as follows:

**§52.1770 Identification of plan.**

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(c) \* \* \*

**(1) EPA APPROVED NORTH CAROLINA REGULATIONS**

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Explanation</b>
**	**	*	*	*
<b>Subchapter 2Q Air Quality Permits</b>				
<b>Section .0100 General Provisions</b>				
Section .0101	Required Air Quality Permits	12/1/2005	[insert date of publication in the Federal Register], [insert Federal Register citation]	
**	**	*	*	*
<b>Section .0300 Construction and Operating Permits</b>				
Section .0301	Applicability	12/1/2005	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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[FR Doc. 2019-10724 Filed: 5/22/2019 8:45 am; Publication Date: 5/23/2019]