



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2007-0113; FRL-10006-55-Region 4]

Air Plan Approval;

Georgia: Definition for Permitting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a portion of a State Implementation Plan (SIP) revision submitted by the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division (also known as GA EPD), on September 19, 2006, with a clarification submitted on November 6, 2006 and a supplemental submittal transmitted on November 27, 2019. EPA is proposing to approve portions of a definition that impacts existing minor new source review (NSR) permitting regulations because the State has demonstrated it is consistent with 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-2007-0113 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 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: D. Brad Akers, 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. Mr. Akers can also be reached via telephone at (404) 562-9089 or via electronic mail at akers.brad@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Action is EPA Proposing?

EPA is proposing to approve certain changes to the Georgia SIP that were provided to EPA by GA EPD via a letter dated September 19, 2006. EPA previously approved the majority of the changes to Georgia rules originally included in the September 19, 2006, submittal.¹ In

¹ EPA approved portions of the September 19, 2006, SIP revision as follows: changes to Rule 391-3-1-.01, *Definitions*, were approved on February 9, 2010 (75 FR 6309); changes to Rule 391-3-1-.02, *Provisions*, were approved on February 9, 2010 (75 FR 6309), December 1, 2010 (75 FR 74642), and September 1, 2015 (80 FR 52627); and changes to Rule 391-3-1-.03, *Permits*, were approved on April 9, 2013 (78 FR 21065) and November 22, 2019 (84 FR 64427).

addition, GA EPD has withdrawn several portions of the SIP revision from EPA consideration.² In this action, EPA is proposing to approve the portion of this SIP revision that makes changes to the State’s Rule 391-3-1-.01, *Definitions*. The portion of the SIP revision considered adds a definition for “Pollution control project” (PCP)—which GA EPD describes as environmentally-beneficial projects that reduce criteria pollutant emissions—that relate to minor NSR applicability for construction permitting under Rule 391-3-1-.03, *Permits*. The changes to this rule and EPA’s rationale for proposing approval are described in more detail in Section II of this notice of proposed rulemaking (NPRM).

II. EPA’s Analysis of the State’s Submittal

A. Summary

Georgia seeks to add a definition of “Pollution control project” to its SIP at Rule 391-3-1-.01(qqqq). This definition lists certain projects, described as “environmentally beneficial,” that are exempted from the minor NSR³ construction permit requirements pursuant to Rule 391-3-1-.03(6)(j). The exemption does not apply to sources subject to major NSR requirements under either 391-3-1-.02(7) (“Prevention of Significant Deterioration [PSD] of Air Quality”), or 391-3-1-.03(8) “Permit Requirements” under paragraph (c), (Georgia’s nonattainment new source review (NNSR) program). The exemption for PCPs applies to minor sources only, limiting any

² GA EPD withdrew portions of the September 19, 2006, SIP revision as follows: 391-3-1-.02 on January 25, 2016 and portions of 391-3-1-.01 on November 27, 2019.

³ EPA’s regulations governing the implementation of NSR permitting programs are contained in 40 CFR 51.160 - .166; 52.21, .24; and part 51, appendix S. The CAA NSR program is composed of three separate programs: PSD, NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and applies to major stationary sources in areas that meet the national ambient air quality standards (NAAQS) – “attainment areas” – as well as areas where there is insufficient information to determine if the area meets the NAAQS – “unclassifiable areas.” The NNSR program is established in part D of title I of the CAA and applies to major stationary sources in areas that are not in attainment of the NAAQS – “nonattainment areas.” The Minor NSR program applies to stationary sources that do not require PSD or NNSR permits. Together, these programs are referred to as the NSR programs.

emissions increases from the exempted projects to below the major source thresholds for all pollutants.

EPA previously approved the exemption for PCPs for minor sources at .03(6)(j) on February 9, 2010 (75 FR 6309) but did not act on the PCP definition at Rule 391-3-1-.01(qqqq) at that time. In this action, EPA is proposing to approve a definition of “Pollution control project” at .01(qqqq). Because this definition only applies to minor sources, it is not impacted by the United States Court of Appeals for the District of Columbia Circuit decision in *New York v. EPA*, 413 F.3d 3 (D.C. Cir.), in which the D.C. Circuit vacated an exemption for PCPs from the federal NSR regulations for major sources. Georgia’s previously approved NSR regulations governing major sources are consistent with federal requirements and the D.C. Circuit decision on PCPs for major NSR.

On June 29, 2017, EPA published a NPRM (82 FR 29469) proposing approval of changes to 391-3-1-.01, *Definitions*, and 391-3-1-.03, *Permits* and published an accompanying direct final rulemaking notice (82 FR 29418). EPA specifically proposed to approve a definition of “Pollution control project” at 391-3-1-.01(qqqq), which included subparagraphs .01(qqqq)1. through 8., as a clarifying amendment to an existing exemption from minor NSR permitting at 391-3-1-.03(6)(j). The proposed rule stated that if EPA received adverse comment on the direct final rule, then the Agency would withdraw the direct final rule and address public comments received in a subsequent final rule based on the proposed rule. EPA received one adverse comment regarding the portion of the direct final rule revising 391-3-1-.01, *Definitions*, and EPA accordingly withdrew the direct final rule on August 22, 2017 (82 FR 39671).⁴

⁴ The adverse comment received on the June 29, 2017, proposed rule is included in the docket for this action.

Since the August 22, 2017, withdrawal of EPA’s direct final rule, GA EPD has withdrawn several portions of the definition at .01(qqqq) from EPA consideration. Specifically, on November 27, 2019, GA EPD withdrew .01(qqqq)1. and .01(qqqq)3. through 8., and submitted a supplemental justification for the approval of .01(qqqq)2. into the SIP.⁵ The remaining list of projects EPA is considering in this action at .01(qqqq)2. are as follows: “[e]lectrostatic precipitators, baghouses, high-efficiency multiclones, or scrubbers for control of particulate matter or other air contaminants.”

B. Minor NSR and CAA Section 110(l)

CAA Section 110(a)(2)(C) requires that SIPs include a program for regulating the construction and modification of stationary sources as necessary to ensure that the NAAQS are achieved. Under 40 CFR 51.160(e), the State must identify the types and sizes of sources subject to the program and provide a basis for its determination. Additionally, CAA Section 110(l) provides that EPA shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the CAA.

Georgia has a SIP-approved minor NSR program at Rule 391-3-1-.03. Under that program, the Director of GA EPD must determine prior to issuing a construction permit that the construction or modification of the source will not cause a violation of the NAAQS or other applicable requirement. *See* Rule 391-3-1-.03(8)(a). However, EPA has previously approved certain exemptions from the State’s construction permit requirements at Rule 391-3-1-.03(6). Of relevance here, paragraph (6)(j) exempts PCPs from the requirement to obtain a construction

⁵ The November 27, 2019, partial withdrawal letter and accompanying Attachment A transmitting supporting documentation for the remainder of the SIP revision are included in the docket for this action.

permit. In addition, paragraph (6)(i)(3) exempts the modification of an existing facility where the combined emission increase resulting from the modification falls below certain specified thresholds at paragraph (6)(i)3.

In this action, EPA is proposing to approve a definition of “Pollution control project” as consistent with applicable CAA requirements. Under that definition, GA EPD’s PCP minor NSR exemption would apply to installation of the following types of equipment: electrostatic precipitators, baghouses, high-efficiency multiclones, or scrubbers for control of particulate matter or other air contaminants. Under Georgia Rule 391-3-1-.01(qqqq), these types of projects are presumed to be environmentally beneficial and thus qualify for the exemption; however, the Director of GA EPD may determine prior to granting an operating permit to the source that application of the exemption is not appropriate in a particular case.

EPA has evaluated the exemption and believes, in its technical judgment, that the listed projects will reduce emissions of both NAAQS and non-NAAQS pollutants. Additionally, EPA notes that these projects will not lead to collateral emissions increases of any NAAQS pollutants. As a result, these types of projects already qualify for Georgia’s preexisting minor NSR exemption at Rule 391-3-1-.03(6)(i)3. As noted above, that provision exempts projects that fall below certain specified emissions thresholds. Since the projects included under Rule 391-3-1-.01(qqqq)2. will not increase emissions of any NAAQS pollutant, they would previously have been exempted under those thresholds.

More importantly, EPA believes that these projects are otherwise appropriately exempted from Georgia’s minor NSR program under CAA Section 110(a)(2)(C). As noted above, that provision requires a program within the State to regulate the construction and modification of

sources such that the NAAQS are maintained. By definition, a project that will not lead to any emissions increases will not negatively impact the NAAQS. For similar reasons, EPA also believes this exemption is consistent with CAA Section 110(l), which prohibits EPA from approving a SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in Section 7501 of the CAA), or any other applicable requirement of the Act.

GA EPD further supports this proposed conclusion in its SIP submittal. Specifically, in its November 27, 2019, letter GA EPD asserts that Rule 391-3-1-.01(qqqq)(2) includes control technologies that are not expected to have collateral emissions increases, are commonly used to reduce emissions, and are generally desirable from an environmental protection perspective. GA EPD then explains that the only requests it has received under .01(qqqq) and .03(6)(j) since those rules became state effective in 2006 have been for the addition or replacement of control equipment. In practice, those PCP examples did not result in increases in collateral emissions, and therefore, reduced emissions as intended. Although GA EPA acknowledges in its November 27, 2019 letter that these types of projects would have been exempted under the State's minor NSR exemption thresholds at Rule 391-3-1-.03(6)(i)3., GA EPD believes there is a benefit to clarifying that the activities listed at .01(qqqq)2. are exempt from construction permitting pursuant to .03(6)(j). Therefore, the project list at .01(qqqq)2. serves to provide examples for the public and the regulated community of projects that are presumed to qualify for exemption.

GA EPD also explains in its supplemental letter that the emission limitations and standards which ensure attainment and maintenance of the NAAQS are those at Rule 391-3-1-.02, *Provisions*, and that exemption from the requirement to obtain a construction permit does

not alter in any way these limitations or standards, including work practice, sampling, or monitoring requirements and federal NSR, New Source Performance Standards, and National Emission Standards for Hazardous Air Pollutants provisions incorporated into the rule.

In sum, 40 CFR 51.160(e) requires that the SIP identify the “types and sizes of facilities, buildings, structures, or installations which will be subject to review” under the State’s minor NSR program. EPA is proposing approval of the definition of sources that qualify as PCPs at Rule 391-3-1-.01(qqqq) because the definition describes projects that already qualify for preexisting SIP-approved exemptions, and because the projects will not increase emissions of pollutants, or otherwise impact the State’s ability to achieve the NAAQS, as required by CAA sections 110(a)(2)(C) and 110(l).

C. CAA section 193

Section 193 of the CAA provides, in part, that “[n]o control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.” As noted in Section II.B. of this NPRM, EPA believes the proposed revisions will not lead to any increases of NAAQS pollutants. Thus, to the extent Section 193 applies to this proposed action, EPA has preliminarily concluded that the proposed revision is consistent with the requirements of that provision.

III. 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 Georgia Rule 391-3-1-.01, entitled “Definitions,” effective July 20, 2017, which adds a definition for a “Pollution control project.”^{6,7} 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 portion of the September 19, 2006, SIP revision that adds a definition at Rule 391-3-1-.01(qqqq). EPA believes this change is consistent with the CAA and will not impact the NAAQS or interfere with any other applicable requirement of the Act.

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:

⁶ The effective date of the change to Rule 391-3-1-.01 made in Georgia’s September 19, 2006, SIP revision is July 13, 2006. However, for purposes of the state effective date included at 40 CFR 52.570(c), that change to Georgia’s rule is captured and superseded by Georgia’s update in a November 13, 2017, SIP revision, state effective on July 20, 2017, which EPA previously approved on December 4, 2018. *See* 83 FR 62466.

⁷ Except for (qqq)1. and (qqq)3. through 8., which were withdrawn from EPA consideration on November 27, 2019.

- 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, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

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

Dated: March 4, 2020.

Mary S. Walker,
Regional Administrator,
Region 4.

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