

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R04-OAR-2007-0085; FRL-9966-24-Region 4]

**Air Plan Approval; NC; Air Curtain Burners****AGENCY:** Environmental Protection Agency.**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve portions of revisions 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), Division of Air Quality (DAQ), on October 14, 2004, March 24, 2006, and January 31, 2008. The revisions which EPA is approving are changes to the air curtain burner regulation of the North Carolina SIP. These revisions are part of North Carolina's strategy to meet and maintain the national ambient air quality standards (NAAQS). EPA has taken or will take action with respect to all other portions of these SIP revisions. This action is being taken pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

**DATES:** This direct final rule is effective October 16, 2017 without further notice, unless EPA receives adverse comment by September 18, 2017. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2007-0085 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.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:** Sean Lakeman or Nacosta C. Ward, 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. Lakeman can be reached via telephone at (404) 562-9043 or via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov). Ms. Ward can be reached via telephone at (404) 562-9140, or via electronic mail at [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

In this rulemaking, EPA is taking direct final action to approve portions of the revisions to the North Carolina SIP submitted on October 14, 2004, March 24, 2006, and January 31, 2008. EPA is taking direct final action on the changes to 15A NCAC Subchapter 2D—Air Pollution Control Requirements, Section .1904, *Air Curtain Burners*. These changes are a part of North Carolina's strategy to attain and maintain the NAAQS and are approvable into the North Carolina SIP pursuant to section 110 of the CAA. EPA is not taking action on 15A NCAC Subchapter 2D—Air Pollution Control Requirements, Section .1201, *Purpose and Scope*, submitted on January 31, 2008, because this rule pertains to incinerators and addresses emission guidelines under CAA sections 111(d) and 129 and 40 CFR part 60; it is not a part of the federally-approved SIP. EPA has taken or will take separate action on all other portions of these SIP submissions.

**II. Analysis of the State Submittals**

North Carolina submitted revisions to 15A NCAC Subchapter 2D—Air Pollution Control Requirements, Section .1904, *Air Curtain Burners* for incorporation into the federally-approved SIP. Detailed descriptions of the changes are below:

**A. Changes to 2D Section .1904—Submitted October 14, 2004**

The changes contained in the October 14, 2004, SIP submission require that permits be obtained for air curtain burners as defined by 40 CFR 60.2245 through 60.2265, permanent burning sites or materials transported from

burning site to burning site. These permitted air curtain burners must also have a certified visible emissions reader onsite at all times and during the operation of the burner to ensure that the visible emissions can be read for compliance purposes. A provision has also been added to cease operation of air curtain burners in fine particulate matter (PM<sub>2.5</sub>) and ozone nonattainment areas on ozone action days with status "orange" or above.

North Carolina's submission modifies the provision which governs air curtain burning where burning should be at least 500 feet away from any dwelling, group of dwellings, or commercial or institutional establishment or other occupied structure not located on the property where the burning is conducted. These burning occurrences must be approved before the initiation of the burn. The daily log at permanent air curtain burner sites must be maintained onsite for two years and be available for inspection. If an owner or operator is using a different technology or method other than an air curtain burner as defined under 2D Section .1902,<sup>1</sup> the owner or operator must demonstrate that the burner is at least as effective. The revision also specifies that if it is a burner constructed after November 30, 1999, or has been modified after June 1, 2001, it must comply with 40 CFR 60.2245 through 60.2265 (*i.e.*, the "Air Curtain Incinerators" portion of 40 CFR part 60, subpart CCCC (*Standards of Performance for Commercial and Industrial Solid Waste Incineration Units*)).

This SIP revision increases the six-minute average plume opacity limit during operation from five percent to ten percent. North Carolina states that the purpose of this change is to align the state rule with federal requirements. The revision also extends the allowed startup time of the burners from 30 to 45 minutes. The revision does not change an existing allowance for one six-minute period with an average opacity of more than ten percent but no more than 35 percent during any one-hour period.

On April 11, 2017, DAQ submitted a non-interference or section 110(l) demonstration which describes how these changes will not interfere with the attainment and maintenance of the NAAQS. North Carolina states there are

<sup>1</sup> "Air Curtain Burner" as defined in 2D Section .1902 is a stationary or portable combustion device that directs a plane of high velocity forced draft air through a manifold head into a pit or container with vertical walls in such a manner as to maintain a curtain of air over the surface of the pit and a circulating motion of air under the curtain.

currently seven air curtain burners in the State that are subject to 2D Section .1904 but that, due to source size and construction commencement dates, none are subject to 40 CFR part 60, subpart CCCC. Additionally, North Carolina states that any change in source emissions associated with the alignment of the opacity limit of 2D Section .1904 with the federal regulations would be minimal. North Carolina reports that these facilities are not routinely operational, as they are used primarily for elimination of debris after severe storms. North Carolina also demonstrates that reported pollutant emissions from these units have been very low and that the design values in the counties closest to them (all in the eastern part of the State) are well below the Fine Particulate Matter NAAQS. North Carolina also notes that there are currently no nonattainment areas for any NAAQS in the State and that these changes to the SIP are not anticipated to cause any area to come out of compliance with the NAAQS.

*B. Changes to Section .1904—Submitted March 24, 2006*

The changes contained in the March 24, 2006, SIP submission are clarifications to existing text in the regulation. The changes make the regulation applicable to air curtain burners in general and not only those currently identified in paragraph (a), which are burners subject to 40 CFR 60.2245–60.2265 or located at permanent burning sites or where materials are transported in from another burning site. The term “ozone forecast area” is also being replaced with “air quality forecast area” in order to address all pollutants instead of only ozone.

*C. Changes to Section .1904—Submitted January 31, 2008*

The changes contained in the January 31, 2008, SIP submission expand the scope of the types of air curtain burners for which air quality permits must be issued to also include air curtain burners subject to 40 CFR 60.2810 through 60.2870, 60.2970 through 60.2975, and 60.3062 through 60.3069. The changes specify the opacity standards to which the various air curtain burner types are subject as outlined in 40 CFR part 60, instead of the opacity standards as previously outlined in the existing subparagraphs of the regulation. Lastly, the recordkeeping and reporting requirements have also been expanded to note the applicability of the additional requirements for owner and operators of air curtain burners subject

to 40 CFR 60.2810 through 60.2870, 60.2970 through 60.2975, and 60.3062 through 60.3069.

### III. 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 15A NCAC Subchapter 2D—*Air Pollution Control Requirements*, Sect. .1904, *Air Curtain Burners* effective March 11, 2004, November 10, 2005, and July 1, 2007, revising air curtain burner requirements. 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 by the Director of the Federal Register in the next update to the SIP compilation.<sup>2</sup> EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or 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. Final Action

EPA is approving the aforementioned revisions to the North Carolina SIP submitted by the State of North Carolina on October 14, 2004, March 24, 2006, and January 31, 2008, pursuant to section 110 because these revisions are consistent with the CAA. Changes to the other sections in these submissions will be or have been processed in a separate action, as appropriate, for approval into the North Carolina SIP. As noted above, EPA is not taking action on changes to 15A NCAC Subchapter 2D—*Air Pollution Control Requirements*, Section .1201, *Purpose and Scope*, as submitted on January 31, 2008, because this rule pertains to incinerators and addresses emission guidelines under CAA sections 111(d) and 129 and 40 CFR part 60 and is not a part of the federally-approved SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision

should adverse comments be filed. This rule will be effective October 16, 2017 without further notice unless the Agency receives adverse comments by September 18, 2017.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All adverse comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 16, 2017 and no further action will be taken on the proposed rule.

### 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. 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) 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 (Pub. L. 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);

<sup>2</sup> 62 FR 27968 (May 22, 1997).

- 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 October 16, 2017. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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: August 4, 2017.

**V. Anne Heard,**

*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, the table in paragraph (c) is amended by revising the entry “Sect .1904” to read as follows:

**§ 52.1770 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

TABLE 1—EPA-APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
<b>Subchapter 2D Air Pollution Control Requirements</b>				
*	*	*	*	*
<b>Section .1900 Open Burning</b>				
*	*	*	*	*
Sect .1904 .....	Air Curtain Burners .....	7/1/2007	8/17/2017, [insert <b>Federal Register</b> citation].	
*	*	*	*	*