

Protection Act, title VII of" after "United States Code by" and by revising paragraph (d)(3) to read as follows:."

#### **§ 202.11 Architectural works.**

\* \* \* \* \*

(d) \* \* \*  
(3) Pre-December 1, 1990 building designs.

(i) *Published building designs.* The designs of buildings where the plans or drawings of the building were published before December 1, 1990, or the buildings were constructed or otherwise published before December 1, 1990.

(ii) *Unpublished building designs.* The designs of buildings that were unconstructed and embodied in unpublished plans or drawings on December 1, 1990, and remained unconstructed on December 31, 2002.

Dated: June 25, 2003.

**Marilyn J. Kretsinger,**

*Associate General Counsel.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[NC-85-200241(a); FRL-7395-7]

#### **Approval and Promulgation of Implementation Plans, State of North Carolina: Approval of Miscellaneous Revisions to the Mecklenburg County Air Pollution Control Ordinance**

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

**ACTION:** Direct final rule.

**SUMMARY:** On September 24, 1997, The North Carolina Department of Environment and Natural resources submitted revisions to the Mecklenburg County Air Pollution Control Ordinance (MCAPCO). These revisions include the additions and/or modifications of new requirements for permits under MCAPCO Section 1.5200 *Air Quality Permits*. In Addition, the MCAPCO Sections 1.5300 *Enforcement*; *Variances*; *Judicial Review* and 1.5600 *Transportation Facility Procedures* are being revised. These revisions of the Mecklenburg County Air Pollution Control Ordinance are necessary to remain consistent with EPA requirements.

**DATES:** This direct final rule is effective August 29, 2003 without further notice, unless EPA receives adverse comment by July 30, 2003. 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:** All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Randy Terry, 404/562-9032.

North Carolina Department of Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

Mecklenburg County Department of Environmental Protection 700 North Tryon Street, Charlotte, North Carolina 28202-2236.

#### **FOR FURTHER INFORMATION CONTACT:**

Randy B. Terry, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9032. Mr. Terry can also be reached via electronic mail at [terry.randy@epa.gov](mailto:terry.randy@epa.gov).

**SUPPLEMENTARY INFORMATION:** On September 24, 1997, the State of North Carolina Department of Environment and Natural Resources submitted revisions to amend or adopt multiple sections in the Mecklenburg County Air Pollution Control Ordinance. These amendments address Air Quality Permits, Enforcement; Variances; Judicial Review, and Transportation Facility Procedures. A detailed explanation of each major amendment is detailed below:

#### *Section 1.5200 Air Quality Permits*

MCAPCO Section 1.5213 *Action on Application; Issuance of Permit* has been revised to incorporate the addition of language governing public notice and a thirty day comment period prior to permit issuance, permit applicant's right to administrative hearing, public hearing, stringency of permits and enforceability of permit requirements.

MCAPCO Section 1.5215 *Application Processing Schedule* has been adopted to set forth the schedule for processing permit applications, modifications, and renewals.

MCAPCO Section 1.5231 *Permit Fees* has been revised to modify the definitions of "Actual Emissions," "Burning Approval Inspection," "Non-

attainment Pollutant facility," "NSPS facility," "Process ID," "SIP facility," "SB (select B)," "Synthetic minor facility," and "Truck Tank Decal." These definitions were modified to be consistent with EPA requirements.

MCAPCO Section 1.5232 *Issuance, Revocation, and Enforcement of Permits* has been modified to indicate the type of factors the Director shall consider during his annual review of permits to determine if a permit modification is required.

#### *Section 1.5300 Enforcement; Variances; Judicial Review*

MCAPCO Section 1.5305 *Variances* has been modified to clarify the process for submitting a State approved variance to the EPA for inclusion into the federally approved SIP.

MCAPCO Section 1.5306 *Hearings* has been modified to include a subsection that covers the cancellation of an appeal hearing.

#### *Section 1.5600 Transportation Facility Procedures*

MCAPCO Section 1.5604 *Public Participation* has been adopted to list in detail the requirements of the Director with respect to public participation including public notice and public hearings.

MCAPCO Section 1.5607 *Application Processing Schedule* has been adopted to list the schedule of requirements for processing applications for transportation facility permits.

#### **Final Action**

EPA is approving the aforementioned changes to the SIP because the revisions are consistent with Clean Air Act and EPA regulatory requirements. The 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 August 29, 2003 without further notice unless the Agency receives adverse comments by July 30, 2003.

If the 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 public comments received will then be addressed in a subsequent final rule based on the proposed rule. The 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 August 29, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule 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 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 August 29, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 20, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

- 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. Section 52.1770(c), Table 3 is amended to read as follows:
  - a. Under Section 1.5100 by adding in numerical order new entry for "1.5111";
  - b. Under Section 1.5200 by adding in numerical order new entries for "1.5212," "1.5213," "1.5214," "1.5215," "1.5231," and "1.5232;" and
  - c. Under Article 1.000 by adding in numerical order new entries for "Section 1.5300" and "Section 1.5600."

#### § 52.1770 Identification of plan.

\* \* \* \* \*

(c). \* \* \*

TABLE 3.—EPA APPROVED MECKLENBURG COUNTY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
<b>Article 1.000 Permitting Provisions For Air Pollution Sources, Rules and Operating Regulations for Acid Rain Sources, Title V and Toxic Air Pollutants</b>				
<b>Section 1.5100 General Provisions and Administrations</b>				
1.5111	General Recordkeeping, Reporting and Monitoring Requirements.	07/01/96	06/30/03	

TABLE 3.—EPA APPROVED MECKLENBURG COUNTY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 1.5200 Air Quality Permits				
1.5212	Applications	07/01/96	06/30/03	
1.5213	Action on Application; Issuance of Permit	07/01/96	06/30/03	
1.5214	Commencement of Operation	07/01/96	06/30/03	
1.5215	Application Processing Schedule	07/01/96	06/30/03	
1.5231	Permit Fees	07/01/96	06/30/03	
1.5232	Issuance, Revocation, and Enforcement of Permits	07/01/96	06/30/03	
Section 1.5300 Enforcement; Variances; Judicial Review				
1.5305	Variances	07/01/96	06/30/03	
1.5306	Hearings	07/01/96	06/30/03	
Section 1.5600 Transportation Facility Procedures				
1.5604	Public Participation	07/01/96	06/30/03	
1.5607	Application Processing Schedule	07/01/96	06/30/03	

\* \* \* \*

[FR Doc. 03–172 Filed 6–27–03; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52****[SIP NO. CO–001–0075a; FRL–7512–7]****Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Credible Evidence****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action approving a State Implementation Plan (SIP) revision submitted by the Governor of Colorado on July 31, 2002. The July 31, 2002, submittal revises Colorado Air Quality Control Commission (AQCC) Common Provisions Regulation by adding a credible evidence rule. The intended effect of this action is to make the credible evidence rule Federally enforceable. Also, the Governor's July 31, 2002, submittal contains other SIP revisions which will be addressed separately. This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** This rule is effective on August 29, 2003, without further notice, unless EPA receives adverse comment by July 30, 2003. If adverse comment is

received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202 and copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530.

**FOR FURTHER INFORMATION CONTACT:** Laurel Dygowski, EPA, Region 8, (303) 312–6144.

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever “we” or “our” is used means EPA.

**I. Summary of SIP Revision**

Colorado has adopted a credible evidence rule (Colorado AQCC Common

Provisions Regulation, section II.I) to comply with the EPA's final rule concerning credible evidence. On February 24, 1997, EPA promulgated regulations under section 113(a) and 113(e)(1) of the CAA that gave EPA authority to use all available data to prove CAA violations (*see* 62 FR 6314–8328, February 24, 1997). The final rule requires states to include provisions in their SIPs to allow for the use of credible evidence for the purposes of submitting compliance certifications and for establishing whether or not a person has violated a standard in a SIP.

In accordance with section 110(k)(5) of the CAA, a SIP call was issued to the State of Colorado on July 7, 1994, which was later superseded by another SIP call on October 20, 1999. In the October 20, 1999, letter, from William P. Yellowtail, EPA Regional Administrator, to Bill Owens, Governor of Colorado, EPA notified the State of Colorado that their SIP was inadequate to comply with sections 110(a)(2)(A) and (C) of the CAA because the SIP could be interpreted to limit the types of credible evidence or information that may be used for determining compliance and establishing violations. In response to the SIP call, the State of Colorado adopted and submitted a new credible evidence rule, Colorado AQCC Common Provisions Regulation, section II.I, titled Compliance Certifications. EPA believes that section II.I of Colorado AQCC Common Provisions Regulation meets the requirements of 40 CFR 51.212(c) and is approving it into the SIP.