

to the river bottom within the Weymouth Fore River encompassed by a line connecting points 42°14'34" N, 070°58'03" W; 42°14'44" N, 070°57'59" W; 42°14'45" N, 070°58'03" W; and 42°14'35" N, 070°58'05" W, which encloses the area along the main shipping channel, between the fendering system of the bridges, and approximately 200 yards upstream and 100 yards downstream of the Route 3A bridge.

(b) *Effective period.* This section is effective from sunrise June 10, 2002 until sunset on August 3, 2002.

(c) *Enforcement periods.* This section will be enforced from Monday, June 10, 2002, until sunset on Saturday, June 15, 2002; from sunrise Monday, July 15, 2002, until sunset on Saturday, July 20, 2002; and from sunrise Monday, July 29, 2002, until sunset on Saturday, August 3, 2002. In the event that the contractor is unable to complete the prescribed work during these closures, there will also be three contingency enforcement periods: from sunrise Monday, June 24, 2002, until sunset on Saturday, June 29, 2002; from sunrise Monday, August 12, 2002, until sunset Saturday, August 17, 2002; and from sunrise Monday, August 26, 2002 until sunset Saturday, August 31, 2002. Whenever the Captain of the Port (COTP) determines that a safety zone in effect is not needed for the entire 6-day period to accomplish the purposes of this rule due to completion of scheduled work, the COTP will discontinue enforcement of the safety zone for that period and issue a broadcast notice to mariners (BNTM) so informing the public.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston. Requests to enter the safety zone can be made by calling Marine Safety Office Boston at (617) 223-3000.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: March 28, 2002.

**B. M. Salerno,**

*Captain, U. S. Coast, Guard, Captain of the Port, Boston, Massachusetts.*

[FR Doc. 02-8591 Filed 4-9-02; 8:45 am]

**BILLING CODE 4910-15-U**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[AL-058-200219(b); FRL-7168-9]

**Approval and Promulgation of Implementation Plans: Revisions to the Alabama Department of Environmental Management (ADEM) Administrative Code for the Air Pollution Control Program**

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing approval of revisions to the Alabama Department of Environmental Management's (ADEM) Administrative Code submitted on February 21, 2002, by the State of Alabama. The revisions comply with the regulations set forth in the Clean Air Act (CAA). On February 21, 2002, the State of Alabama through ADEM submitted revisions to chapters 335-3-14 "Air Permits" to correct numbering inconsistency.

In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before May 10, 2002.

**ADDRESSES:** Written comments should be addressed to Sean Lakeman, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 U.S. Environmental Protection Agency,

Region 4, Atlanta Federal Center, Air, Pesticides, and Toxics Management Division, 61 Forsyth Street, Atlanta, Georgia 30303-8960.

**FOR FURTHER INFORMATION CONTACT:**

Sean Lakeman; Regulatory Development Section; Air Planning 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 also be reached by phone at (404) 562-9043 or by electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the Final Rules section of this **Federal Register**.

Dated: March 28, 2002.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 02-8532 Filed 4-9-02; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[SC-037; 040-200217; FRL-7169-6]

**Approval and Promulgation of Implementation Plans: South Carolina: Nitrogen Oxides Budget and Allowance Trading Program**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of South Carolina on October 30, 2000, and revised on July 30, 2001. This revision responds to the EPA's regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO<sub>x</sub> SIP Call." This revision establishes and requires a nitrogen oxides (NO<sub>x</sub>) allowance trading program for large electric generating and industrial units, and reductions for cement kilns, beginning in 2004. The revision includes a budget demonstration and initial source allocations that clearly demonstrate that South Carolina will achieve the required NO<sub>x</sub> emission reductions in accordance with the timelines set forth in EPA's NO<sub>x</sub> SIP Call. The intended effect of this SIP revision is to reduce emissions of NO<sub>x</sub> in order to help attain the national

ambient air quality standard for ozone. EPA is proposing to approve South Carolina's NO<sub>x</sub> Reduction and Trading Program because it meets the requirements of the Phase I NO<sub>x</sub> SIP Call that will significantly reduce ozone transport in the eastern United States. South Carolina has requested that EPA parallel process this revision because the revision is not yet state-effective.

**DATES:** Written comments must be received on or before May 10, 2002.

**ADDRESSES:** All comments should be addressed to: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

Copies of documents relative to this action 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.

South Carolina Department of Health  
and Environmental Control, Bureau of  
Air Quality Control, 2600 Bull Street,  
Columbia, South Carolina 29201.

The interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day and reference file SC-037.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman, 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) 562-9043. Mr. Lakeman can also be reached via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

**SUPPLEMENTARY INFORMATION:** On October 30, 2000, the South Carolina Department of Health and Environmental Control (DHEC) submitted a draft NO<sub>x</sub> emission control rule to the EPA for pre-adoption review. Also, DHEC requested that EPA parallel process the submittal concurrent with the development of the final State rule and included a schedule for development and adoption of the rule by the State. On July 30, 2001, DHEC submitted adopted revisions to its SIP to meet the requirements of the Phase I NO<sub>x</sub> SIP Call. After the rules are adopted by the South Carolina Board of Health and Environmental Control, the revisions must be reviewed and approved by the South Carolina General

Assembly. After approval by the General Assembly, the rules will become state-effective upon publication in the South Carolina State Register. EPA will take final action on South Carolina's revisions when the State submits state-effective rule revisions, including their emission budgets and initial allocations.

The revisions submitted comply with the requirements of the Phase I NO<sub>x</sub> SIP Call. Included in South Carolina's submittal are new rules Regulation 61-62.96 NO<sub>x</sub> Budget Trading Program and Regulation 61-62.99 Nitrogen Oxides Budget Program Requirements For Stationary Sources Not In the Trading Program. The information in this proposal is organized as follows:

#### I. EPA's Action

- A. What action Is EPA proposing today?
- B. Why Is EPA Proposing This Action?
- C. What Are the NO<sub>x</sub> SIP Call General Requirements?
- D. What is SPA's NO<sub>x</sub> budget and allowance trading program?
- E. What guidance did EPA use to evaluate South Carolina's submittal?

What is the result of EPA's evaluation of South Carolina's program?

#### II. South Carolina's Control of NO<sub>x</sub> Emissions

- A. When did South Carolina submit the SIP revision to EPA in response to the NO<sub>x</sub> SIP Call?
- B. What is the South Carolina NO<sub>x</sub> Budget Trading Program?
- C. What is the Compliance Supplement Pool?
- D. What is the New Source Set-Aside program?

#### III. Proposed Action

#### IV. Administrative Requirements

##### I. EPA's Action

###### A. What Action is EPA Proposing Today?

EPA is proposing to approve revisions to South Carolina's SIP concerning the adoption of its NO<sub>x</sub> Reduction and Trading Program, submitted for parallel processing on October 30, 2000, and revised on July 30, 2001.

###### B. Why is EPA Proposing This Action?

EPA is proposing this action because South Carolina's NO<sub>x</sub> Reduction and Trading Program and cement kiln regulations meet the requirements of the Phase I NO<sub>x</sub> SIP Call. Therefore, EPA is proposing full approval of South Carolina's NO<sub>x</sub> Reduction and Trading Program.

###### C. What Are the NO<sub>x</sub> SIP Call General Requirements?

The NO<sub>x</sub> SIP Call requires 22 States and the District of Columbia to meet statewide NO<sub>x</sub> emission budgets during the five month period from May 1 to September 30, called the ozone season (or control period), in order to reduce the amount of ground level ozone that is transported across the eastern United States. The D.C. Circuit decision on March 3, 2000, concerning the NO<sub>x</sub> SIP Call (*Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000)) reduced the number of States from 22 to 19.

EPA identified NO<sub>x</sub> emission reductions by source category that could be achieved by using cost-effective controls. The source categories included were electric generating units (EGUs) and non-electric generating units (non-EGUs), internal combustion engines, and cement kilns. EPA determined state-wide NO<sub>x</sub> emission budgets based on the implementation of these cost effective controls for each affected jurisdiction to be met by the year 2007. Internal combustion engines are not addressed by South Carolina in this response to Phase I, but will be in Phase II. In the NO<sub>x</sub> SIP Call notice, EPA suggested that imposing statewide NO<sub>x</sub> emissions caps on large fossil-fuel fired industrial boilers and EGUs would provide a highly cost effective means for states to meet their NO<sub>x</sub> budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 pounds NO<sub>x</sub> per million British thermal units (lb. NO<sub>x</sub>/mmBtu) at EGUs, multiplied by the projected heat input (mmBtu/hr). The NO<sub>x</sub> SIP Call state budgets also assumed on average a 30 percent NO<sub>x</sub> reduction from cement kilns, and a 60 percent reduction from industrial boilers. The non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 mmBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day. However, the NO<sub>x</sub> SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets.

To assist the states in their efforts to meet the SIP Call, the NO<sub>x</sub> SIP Call final notice included a model NO<sub>x</sub> allowance trading regulation, called "NO<sub>x</sub> Budget Trading Program for State Implementation Plans," (40 CFR part 96), that could be used by states to develop their regulations. The NO<sub>x</sub> SIP Call notice explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by the EPA. See 63 FR 57458-57459.

There were several periods during which EPA received comments on various aspects of the NO<sub>x</sub> SIP Call emissions inventories. On March 2, 2000 (65 FR 11222), EPA published additional technical amendments to the NO<sub>x</sub> SIP. On March 3, 2000, the D.C. Circuit issued a decision on the NO<sub>x</sub> SIP Call that largely upheld EPA's position. (*Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000)). The DC Circuit Court denied petitioners' requests for rehearing or rehearing en banc on July 22, 2000. However, the Circuit Court remanded four specific elements to EPA for further action: the definition of electric generating unit, the level of control for stationary internal combustion engines, the geographic extent of the NO<sub>x</sub> SIP Call for Georgia and Missouri, and the inclusion of Wisconsin. On March 5, 2001, the U.S. Supreme Court declined to hear an appeal by various utilities, industry groups, and a number of upwind states from the D.C. Circuit's ruling on EPA's NO<sub>x</sub> SIP Call rule.

EPA published a proposal that addresses the remanded portion of the NO<sub>x</sub> SIP Call on February 22, 2002 (67 FR 8396). Any

additional emissions reductions required as a result of a final rulemaking on that proposal will be reflected in the second phase portion (Phase II) of the State's emission budget. On April 11, 2000, in response to the Court's decision, EPA notified South Carolina of the maximum amount of NO<sub>x</sub> emissions allowed for the State during the ozone season. This budget adjusted South Carolina's NO<sub>x</sub> emission budget to reflect the Court's decision regarding internal combustion engines and cogeneration facilities. Although the Court did not order EPA to modify South Carolina's budget, the EPA believes these adjustments are consistent with the Court's decision.

#### *D. What is EPA's NO<sub>x</sub> Budget and Allowance Trading Program?*

EPA's model NO<sub>x</sub> budget and allowance trading rule, 40 CFR part 96, sets forth an NO<sub>x</sub> emissions trading program for large EGUs and non-EGUs. A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading. The October 27, 1998, **Federal Register** notice contains a full description of the EPA's model NO<sub>x</sub> budget trading program. See 63 FR 57514—57538 and 40 CFR part 96.

Emissions trading, in general, uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a "cap and trade" program.

In a cap and trade program, the state (or EPA) sets a regulatory limit in mass emissions (emissions budget) from a specific group of sources. The budget limits the total number of allowances for each source covered by the program during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state (or EPA) then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, e.g., one ton of airborne NO<sub>x</sub>.

At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner.

#### *E. What Guidance Did EPA Use To Evaluate South Carolina's Submittal?*

The final NO<sub>x</sub> SIP Call rule included a model NO<sub>x</sub> budget trading program regulation. See 40 CFR part 96. EPA used the model rule in 40 CFR part 96, and 40 CFR 51.121—51.122 to evaluate South Carolina's NO<sub>x</sub> reduction and trading program and 40

CFR Part 98 subpart B (proposed model rule for cement kilns) to evaluate South Carolina's cement kiln rule SIP submittal.

#### *F. What Is the Result of EPA's Evaluation of South Carolina's Program?*

EPA has evaluated South Carolina's July 30, 2001, SIP submittal and finds it approvable. The South Carolina NO<sub>x</sub> reduction and trading program and cement kiln rule are consistent with EPA's guidance and meet the requirements of the Phase I NO<sub>x</sub> SIP Call. EPA finds the NO<sub>x</sub> control measures in South Carolina's NO<sub>x</sub> reduction and trading program approvable. Also, EPA finds that the submittal contained the information necessary to demonstrate that South Carolina has the legal authority to implement and enforce the control measures, and to demonstrate their appropriate distribution of the compliance supplement pool. Furthermore, EPA proposes to find that the submittal demonstrates that the compliance dates and schedules, and the monitoring, recordkeeping and emission reporting requirements, will be met.

## **II. South Carolina's Control of NO<sub>x</sub> Emissions**

#### *A. When Did South Carolina Submit the SIP Revision to EPA in Response to the NO<sub>x</sub> SIP Call?*

On October 30, 2000, the South Carolina DHEC submitted a draft NO<sub>x</sub> emission control rule to the EPA for pre-adoption review, requesting parallel processing concurrent with the development of the rule at the State level and included a schedule for development and adoption of the rule by the State. On July 30, 2001, DHEC submitted adopted revisions to its SIP to meet the requirements of the Phase I NO<sub>x</sub> SIP Call. Since the rules have not exceeded South Carolina's internal requirements to become state-effective, EPA is using the parallel process to propose approval of these rules.

#### *B. What Is South Carolina's NO<sub>x</sub> Budget Trading Program?*

South Carolina proposes, as in the model rule, to allow the large EGUs, boilers, and turbines to participate in the multi-state cap and trade program. Cement kilns are not included in the trading program, but will be required to install low NO<sub>x</sub> burners, mid-kiln system firings or technology that achieves the same emission decreases, which achieve overall 30 percent reduction from sources in this category. South Carolina's SIP revision to meet the requirements of the NO<sub>x</sub> SIP Call consists of a new rule for the "NO<sub>x</sub> Budget Trading Program" (regulation 61–62.96) and a new rule for "Nitrogen Oxides (NO<sub>x</sub>) Budget Program Requirements for Stationary Sources Not in the Trading Program" (regulation 61–62.99). The requirements under 61–62.96 affect EGUs and non-EGUs. Regulation 61–62.96 "NO<sub>x</sub> Budget Trading Program" added nine new subparts: Subpart A—NO<sub>x</sub> Budget Trading Program General Provisions; Subpart B—Authorized Account Representative for NO<sub>x</sub> Budget Sources; Subpart C—Permits; Subpart D—Compliance Certification; Subpart E—NO<sub>x</sub> Allowance Allocations; Subpart F—NO<sub>x</sub> Allowance Tracking System; Subpart G—NO<sub>x</sub>

Allowance Transfers; Subpart H—Monitoring and Reporting; Subpart I—Individual Unit Opt-ins.

South Carolina's NO<sub>x</sub> Budget Trading Program establishes and requires a NO<sub>x</sub> allowance trading program for large EGUs and non-EGUs. The regulations under 61–62.96 establish an NO<sub>x</sub> cap and allowance trading program for the ozone control seasons beginning May 31, 2004, and commencing May 1 in years thereafter.

The State of South Carolina voluntarily chose to follow the EPA's model NO<sub>x</sub> budget and allowance trading rule, 40 CFR part 96. Since South Carolina's NO<sub>x</sub> Budget Trading Program is based upon EPA's model rule, it is approvable and South Carolina sources are allowed to participate in the interstate NO<sub>x</sub> allowance trading program that EPA will administer for the participating states.

The State of South Carolina has adopted regulations that are substantively identical to 40 CFR part 96. Therefore, pursuant to 40 CFR 51.121(p)(1), South Carolina's SIP revision is approved as satisfying the State's NO<sub>x</sub> emission reduction obligations. Under 61–62.96, South Carolina allocates NO<sub>x</sub> allowances to the EGU and non-EGU units that are affected by these requirements. The NO<sub>x</sub> trading program, except for one source discussed below, applies to fossil fuel fired EGUs with a nameplate capacity greater than 25 MW that sell electricity to the grid as well as any non-EGUs that have a maximum design heat input greater than 250 mmBtu per hour. Each NO<sub>x</sub> allowance permits a source to emit one ton of NO<sub>x</sub> during the seasonal control period. NO<sub>x</sub> allowances may be bought or sold. Unused NO<sub>x</sub> allowances may also be banked for future use, with certain limitations.

In Section 96.4(a) of their rule, South Carolina deviated from the EGU and non-EGU budget under the NO<sub>x</sub> SIP Call by categorizing as a non-EGU an existing cogenerating unit at a paper mill which produces less than an annual average of one third of its potential electrical output capacity for sale. South Carolina moved the allowances for this unit from the EGU budget into the non-EGU budget. The net effect was to keep the total South Carolina EGU and non-EGU budget the same as under the NO<sub>x</sub> SIP Call. Since the effect of this action did not change the State's total NO<sub>x</sub> budget, and will achieve the same amount of NO<sub>x</sub> reductions, it is considered approvable.

In Section 96.4(b) of their rule, the State allows a unit that restricts its fuel use to only natural gas or fuel oil and its NO<sub>x</sub> emissions to 25 tons or less during a control period (through a federally enforceable permit) to be exempted from the requirements of the trading program. The State has clearly required that the unit meet both the fuel use and the NO<sub>x</sub> emissions limitation throughout section 96.4(b). However, in Section 96.4(b)(iv) the rule indicates that a unit shall lose its exemption if the unit fails to comply with the restrictions on fuel use and NO<sub>x</sub> emissions. This section would be clearer if it specified that a unit will lose its exemption if the unit fails to comply with the restrictions on fuel use or NO<sub>x</sub> emissions. However, the State patterned their rule after the verbiage in 40 CFR part 97, in which the

word “and” is used erroneously. This verbiage has been corrected to “or” in proposed revisions to 40 CFR part 97. EPA believes that South Carolina intends for this rule to reflect the correct definition and that a unit will lose its exemption if the unit fails to meet either the fuel use or the emissions limitation. The State’s intention is further evidenced by the appropriate inclusion of both requirements (fuel use and emissions limitations) throughout section 96.4(b), therefore the EPA believes this section is approvable.

Source owners will monitor their NO<sub>x</sub> emissions by using systems that meet the requirements of 40 CFR part 75, subpart H, and report resulting data to EPA electronically. Each budget source complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other Federal or State limits, for example, reasonably available control technology (RACT), new source performance standards, or Title IV (the Federal Acid Rain program). South Carolina’s regulations

require the following in Section 96.6 Standard requirements: “ (g) Effect on Other Authorities. No provision of the NO<sub>x</sub> Budget Trading Program, a NO<sub>x</sub> Budget permit application, a NO<sub>x</sub> Budget permit, or an exemption under Section 96.5 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO<sub>x</sub> authorized account representative of a NO<sub>x</sub> Budget source or NO<sub>x</sub> Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act (CAA).”

South Carolina’s Nitrogen Oxides (NO<sub>x</sub>) Budget Program Requirements for Stationary Sources Not In The Trading Program (Regulation 61–62.99) establishes requirements for cement manufacturing facilities. While these sources are subject to NO<sub>x</sub> reduction requirements, they do not participate in the NO<sub>x</sub> trading program. Cement kilns will be required to install low NO<sub>x</sub> burners, mid-kiln system firings, or technology that achieves equivalent emission reductions. For mobile and area source categories, South Carolina’s submittal does

not rely on any additional reductions beyond the anticipated federal measures.

South Carolina’s submittal demonstrates that the Phase I NO<sub>x</sub> emission budgets established by EPA will be met. The final NO<sub>x</sub> budget for EGUs and non-EGUs in South Carolina has been revised from the March 2, 2001, notice (65 FR 11222) that revised the NO<sub>x</sub> statewide emissions budgets for the affected states and the District of Columbia. South Carolina’s submittal provides documentation demonstrating that EPA’s 2007 budget emissions incorrectly omitted numerous small generators (less than 25 MW) and a generator with a nameplate capacity of 27 MW that were identified in the North American Electric Reliability Council Database and did not appear in EPA’s original overall EGU budget for South Carolina. EPA reviewed South Carolina’s corrections and concurs with South Carolina’s revised list of EGUs, large non-EGUs and small non-EGUs, as well as South Carolina’s resultant 2007 NO<sub>x</sub> budget emissions for the EGU and non-EGU source categories. EPA therefore is proposing to approve South Carolina’s draft NO<sub>x</sub> emission budgets to meet Phase I of the NO<sub>x</sub> SIP Call as shown below:

Source category	EPA 2007 NO <sub>x</sub> budget emissions (tons/season)	South Carolina 2007 NO <sub>x</sub> budget emissions (tons/season)
EGUs .....	16,772	17,837
Non-EGUs .....	27,787	32,141
Area Sources .....	9,415	9,415
Non-road Sources .....	14,637	14,637
Highway Sources .....	54,494	54,494
Total .....	123,105	128,524

**C. What Is the Compliance Supplement Pool?**

To provide additional flexibility for complying with emission control requirements associated with the NO<sub>x</sub> SIP Call, the final NO<sub>x</sub> SIP Call rule provided each affected state with a “compliance supplement pool.” The compliance supplement pool is a quantity of NO<sub>x</sub> allowances that may be used to cover excess emissions from sources that are unable to meet control requirements during the 2004 and 2005 ozone season. Allowances from the compliance supplement pool will not be valid for compliance past the 2005 ozone season. The NO<sub>x</sub> SIP Call included these voluntary provisions in order to address commenters’ concerns about the possible adverse effect that the control requirements might have on the reliability of the electricity supply or on other industries required to install controls as the result of a state’s response to the NO<sub>x</sub> SIP Call.

A state may issue some or all of the compliance supplement pool via two mechanisms. First, a state may issue some or all of the pool to sources with credits from implementing NO<sub>x</sub> reductions in an ozone season beyond any applicable requirements of the CAA after September 30, 1999, and before May 31, 2004, (i.e., early reductions). This will allow sources that cannot install controls prior to May 31, 2004, to purchase

other sources’ early reduction credits in order to comply. Note that while South Carolina offers the opportunity for sources to earn early reduction credits in the 2000 ozone season (early reduction credits may only be issued for reductions made above and beyond any requirements under the CAA), this presumes monitoring according to part 75, subpart H, to establish a baseline in the ozone season prior to the year for which early reduction credits are requested. Second, a state may issue some or all of the pool to sources that demonstrate a need for an extension of the May 31, 2004, compliance deadline due to undue risk to the supply of electricity or other industrial sectors, and where early reductions are not available. See 40 CFR 51.121(e)(3). In South Carolina’s rule, each NO<sub>x</sub> Budget unit for which the owner or operator requests early reduction credits shall reduce its NO<sub>x</sub> emission rate, for each control period for which early reduction credits are requested, to 0.25 lb/mmBtu or less for a “one to one” credit. For reductions down to but not including 0.25 lb/mmBtu sources can receive early reduction credits at a rate of one-half credit for each ton of NO<sub>x</sub> reduction. South Carolina’s regulation reads, “After the early reduction credits are calculated, the credits shall be discounted for units that do not reduce down to 0.25 lb/mmBtu so that for each ton of NO<sub>x</sub> reduction

achieved down to but not including 0.25 lb/mmBtu, the unit shall receive one half credit. For units that reduce their NO<sub>x</sub> emissions beyond and including 0.25 lb/mmBtu, the credits will not be discounted and the unit shall receive one credit for each ton of NO<sub>x</sub> reduction.” Since the net effect of South Carolina’s rule as it relates to early reduction credit will keep the budget at the proper value, this deviation is considered approvable.

**D. What Is the New Source Set-Aside Program?**

South Carolina’s SIP provides for new unit set-asides for EGUs and for non-EGUs. DHEC will establish one allocation set-aside pool for each control period. The allocation set-aside pool will consist of NO<sub>x</sub> allowances equal to four percent in 2004, 2005, and 2006, and three percent thereafter, of the tons of NO<sub>x</sub> allowances in the State trading budget, rounded to the nearest whole NO<sub>x</sub> allowance as appropriate. This approach to allocations for new units is acceptable because it falls within the flexibility of the NO<sub>x</sub> SIP Call requirements for a state’s allocation to new sources.

**III. Proposed Action**

EPA is proposing to approve the South Carolina’s SIP revision consisting of its draft

NO<sub>x</sub> Budget Trading Program and cement kiln rule, which was submitted on October 30, 2000, and revised on July 30, 2001. EPA finds that South Carolina's submittal will be fully approvable when it becomes state-effective because it meets the requirements of the Phase I NO<sub>x</sub> SIP Call.

#### IV. Administrative Requirements:

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 (Public Law 104-4).

This proposed 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 proposes to approve 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 proposed 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 proposed approval of the South Carolina NO<sub>x</sub> Budget Trading Program does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: April 1, 2002.

#### A. Stanley Meiburg,

*Acting Regional Administrator, Region 4.*

[FR Doc. 02-8685 Filed 4-9-02; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[Region 2 Docket No. PR8-239, FRL-7169-5]

### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Commonwealth of Puerto Rico

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed Rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the Section 111(d) plan submitted by the Commonwealth of Puerto Rico, for the purpose of implementing and enforcing the emission guidelines for existing municipal solid waste landfills. The plan was submitted to fulfill requirements of the Clean Air Act (the Act). The Puerto Rico plan establishes emission limits for existing municipal solid waste landfills, and provides for the implementation and enforcement of those limits.

**DATES:** Comments must be received on or before May 10, 2002.

**ADDRESSES:** Comments should be mailed to Raymond W. Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II, 290 Broadway, 25th Floor, New York, NY 10007-1866. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Division of Environmental Planning and Protection, Air Programs Branch, Environmental Protection Agency, Region II, 290 Broadway, 25th Floor, New York, NY 10007-1866;

Environmental Protection Agency, Region II, Caribbean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce De Leon Avenue, Stop 22, San Juan, Puerto Rico 00907-4127; and the Puerto Rico Environmental Quality Board, National Plaza Building, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico.

#### FOR FURTHER INFORMATION CONTACT:

Demian P. Ellis at (212) 637-3713, or by e-mail at [ellis.demian@epa.gov](mailto:ellis.demian@epa.gov).

**SUPPLEMENTARY INFORMATION:** This document is divided into Sections I—V, and answers the questions posed below:

#### I. General Provisions

- What action is being taken by the Environmental Protection Agency (EPA) today?
- What is a State 111(d) plan?
- What pollutants will this action control?
- What are the expected environmental and public health benefits from controlling municipal solid waste (MSW) landfill gas emissions?

#### II. Federal Requirements the Puerto Rico 111(d) Plan Must Meet for Approval

- What general EPA requirements must Puerto Rico meet to receive approval of its MSW landfill 111(d) plan?
- What does the Puerto Rico plan contain?
- Does the Puerto Rico plan meet all EPA requirements for approval?

#### III. Requirements for Affected MSW Landfill Owners/Operators Must Meet

- How does a MSW landfill determine if it is subject to the Puerto Rico 111(d) plan?
- What general requirements must a facility meet as an affected landfill owner/operator that is subject to the EPA approved Puerto Rico plan?
- If a landfill is subject to the plan's requirement for installation of a landfill gas collection and control system, what emissions limits must it meet, and in what time frame?
- Are there any operational requirements for an installed landfill gas collection and control system?
- What are the testing, monitoring, record keeping, and reporting requirements for a landfill?
- Is a landfill owner/operator required to apply for a Title V permit?
- If the capacity of a landfill is modified or expanded, what additional requirements must it meet?

#### IV. Conclusion

#### V. Administrative Requirements

##### I. General Provisions

*What Action Is Being Taken by the EPA Today?*

EPA is proposing to approve the Commonwealth of Puerto Rico MSW landfill Clean Air Act (the Act) Section 111(d) plan, as submitted by the Puerto Rico Environmental Quality Board