

109°18'00" W; to lat. 37°22'45" N, long.  
 109°18'00" W; to lat. 37°04'00" N, long.  
 108°36'11" W; to lat. 37°02'00" N, long.  
 108°55'00" W; to lat. 37°12'26" N, long.  
 109°18'00" W; to lat. 37°04'00" N, long.  
 109°18'00" W; to lat. 37°04'00" N, long.  
 109°27'20" W; to lat. 36°30'00" N, long.  
 109°34'45" W; to lat. 36°30'00" N, long.  
 109°46'05" W; to lat. 37°04'00" N, long.  
 109°38'45" W; to lat. 37°04'00" N, long.  
 109°42'00" W, thence to point of beginning;  
 excluding Federal airways and the  
 Farmington, NM, Class E airspace area.

\* \* \* \* \*  
 Issued in Seattle, Washington, on  
 September 9, 1996.

Helen Fabian Parke,  
*Manager, Air Traffic Division, Northwest  
 Mountain Region.*

[FR Doc. 96-24177 Filed 9-19-96; 8:45 am]

BILLING CODE 4910-13-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[NC-43-1-9618a; FRL-5609-1]

### Approval and Promulgation of State Implementation Plan, North Carolina: Approval of Cape Industries, Air Permit No. 130R17

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

**ACTION:** Direct final rule.

**SUMMARY:** On August 17, 1989, the State of North Carolina issued to Cape Industries, located in Wilmington, New Hanover County, North Carolina, air permit number 130R11, which set the sulfur dioxide emission limit at 2.3 pounds per million British Thermal Units (BTU). The State then submitted this permit to EPA on September 21, 1989, for approval as a revision to the State implementation plan (SIP). Air permit number 130R11 expired on October 1, 1991, and was subsequently replaced by the current Cape Industries air permit number 130R17 on December 29, 1994. Upon review of the permit, EPA finds that the designated limit for Cape Industries is adequate to protect the ambient standard and approves this permit.

**DATES:** This action is effective November 19, 1996 unless adverse or critical comments are received by October 21, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Randy Terry at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public

inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and  
 Information Center (Air Docket 6102),  
 US Environmental Protection Agency,  
 443, 401 M Street, SW, Washington  
 DC 20460

Environmental Protection Agency,  
 Region IV Air Programs Branch, 345  
 Courtland Street NE, Atlanta, Georgia  
 30365

North Carolina Department of  
 Environment, Health, and Natural  
 Resources, Division of Environmental  
 Management, P.O. Box 29535,  
 Raleigh, North Carolina 27626-0535

**FOR FURTHER INFORMATION CONTACT:** Mr.  
 Randy Terry, Regulatory Planning and  
 Development Section, Air Programs  
 Branch, Air, Pesticides & Toxics  
 Management Division, Region IV  
 Environmental Protection Agency, 345  
 Courtland Street NE, Atlanta, Georgia  
 30365. The telephone number is 404/  
 347-3555, ext. 4212.

**SUPPLEMENTARY INFORMATION:** On  
 December 7, 1982 (47 FR 54934), EPA  
 announced approval of a revised sulfur  
 dioxide (SO<sub>2</sub>) emission limit for most  
 fuel-burning sources in North Carolina.  
 This revision raised the emission limit  
 of SO<sub>2</sub> from 1.6 pounds per million BTU  
 to 2.3 pounds per million BTU. Cape  
 Industries, located in Wilmington, New  
 Hanover County, North Carolina, was  
 included in this rulemaking, but was  
 not allowed to increase its emission  
 level until such time that appropriate  
 conditions could be applied to ensure  
 that the ambient standard was not  
 violated. These conditions included the  
 issuance of an air permit. On August 17,  
 1989, North Carolina Environmental  
 Management Commission issued air  
 permit no. 130R11 to Cape Industries.  
 On September 21, 1989, the State of  
 North Carolina, through the North  
 Carolina Department of Environment,  
 Health and Natural Resources submitted  
 this permit to EPA for approval as a  
 revision to the North Carolina SIP  
 regarding the SO<sub>2</sub> emissions limitation  
 for Cape Industries. In a letter dated  
 November 25, 1991, EPA responded to  
 the Cape Industries submittal with  
 several comments concerning the  
 enforceability of the permit. EPA  
 determined North Carolina's emission  
 standards did not contain the specific  
 test method, the test run duration, and  
 the averaging time for each emission  
 standard, and was therefore  
 unenforceable. EPA also stated that the  
 permit should be revised to include the

opacity limits of each emission point.  
 EPA directed North Carolina to address  
 these sections before the permit could  
 be approved. On March 2, 1994, North  
 Carolina submitted a letter to EPA  
 which effectively responded to all of  
 EPA's concerns and demonstrated that  
 the permit contains adequate  
 recordkeeping and testing requirements.

However, in May, 1994, Cape  
 Industries submitted a modeling  
 protocol to EPA requesting a permit  
 modification to remove current fuel use  
 and boiler firing limitations which were  
 used as permit conditions to avoid an  
 earlier PSD applicability issue. Since  
 the proposed modifications would affect  
 the previous permit conditions which  
 were used as a basis to demonstrate  
 compliance with the Sulfur Dioxide SIP,  
 Cape Industries also submitted this  
 protocol as a Sulfur Dioxide SIP  
 revision. This Modeling protocol was  
 not approvable and on July 28, 1994,  
 EPA responded with a letter outlining  
 the areas that must be addressed. On  
 March 14, 1996, in response to the July  
 28, 1994, EPA letter, Cape Industries  
 officially withdrew their request for the  
 permit modification. During this time  
 the original Cape Industries air permit  
 expired and air permit number 130R17  
 was issued.

### Final Action

EPA is approving Cape Industries' air  
 permit No. 130R17 submitted on August  
 9, 1996, for incorporation into the North  
 Carolina SIP. The EPA is publishing this  
 action without prior proposal because  
 the EPA views this as a  
 noncontroversial amendment and  
 anticipates no adverse comments.  
 However, in a separate document in this  
 Federal Register publication, the EPA is  
 proposing to approve the SIP revision  
 should adverse or critical comments be  
 filed. This action will be effective  
 October 21, 1996 unless, within 30 days  
 of its publication, adverse or critical  
 comments are received.

If the EPA receives such comments,  
 this action will be withdrawn before the  
 effective date by publishing a  
 subsequent document that will  
 withdraw the final action. All public  
 comments received will then be  
 addressed in a subsequent final rule  
 based on this action serving as a  
 proposed rule. The EPA will not  
 institute a second comment period on  
 this action. Any parties interested in  
 commenting on this action should do so  
 at this time. If no such comments are  
 received, the public is advised that this  
 action will be effective November 19,  
 1996.

The EPA has reviewed this request for  
 revision of the Federally-approved SIP

for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under section 307(b)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 19, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the CAA, 42 U.S.C. 7607(b)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the

Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds.

*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

#### Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

#### Unfunded Mandates

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain duties. To the extent that the rules being approved by this action will impose any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 6, 1996.  
Michael V. Peyton,  
*Acting Regional Administrator.*

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

#### Subpart II—North Carolina

2. Section 52.1770, is amended by adding paragraph (c)(91) to read as follows:

##### § 52.1770 Identification of plan.

\* \* \* \* \*

(91) The North Carolina Department of Environment, Health and Natural Resources submitted revisions to the North Carolina State Implementation Plan on September 21, 1989. These revisions incorporate SO<sub>2</sub> limits and permit conditions for Cape Industries.

(i) Incorporation by reference.

(A) Permit for Cape Industries (air permit no. 130R17) which was issued by the Environmental Management Commission on December 29, 1994.

(ii) Additional material—none.

[FR Doc. 96-24045 Filed 9-19-96; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 52

[NC-78-1-7236a; NC-80-1-2-9631a; FRL-5606-3]

#### Approval and Promulgation of Implementation Plans State: Approval of Revisions to the State of North Carolina's State Implementation Plan (SIP)

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the North Carolina State Implementation Plan (SIP) to allow the State air pollution control agency and the Forsyth County, North Carolina air pollution control agency to utilize exclusionary rules for the purpose of limiting potential to emit (PTE) criteria pollutants for certain source categories to less than the title V permitting major source thresholds. EPA is also approving under section 112(l) of the Clean Air Act several source-categories of the submitted regulations for limiting