

[FR Doc. E9-18024 Filed 7-29-09; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2008-0592(a); FRL-8937-2]

#### Approval and Promulgation of Air Quality Implementation Plans—Alabama: Birmingham 1997 8-Hour Ozone Contingency Measures

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Alabama State Implementation Plan (SIP), submitted by the Alabama Department of Environmental Management (ADEM), on February 6, 2008, to adopt contingency measures in the form of permit conditions for two cement kilns. These contingency measures are for the maintenance of the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) in Jefferson and Shelby Counties (“Birmingham Area”). On May 12, 2006, EPA approved the 8-hour ozone redesignation of the Birmingham Area from nonattainment to attainment for the 1997 8-hour ozone NAAQS (see, 71 FR 27631). Additional measures may be necessary in the future; however, these revisions qualify as contingency measures as required under Section 175A(d) of the Clean Air Act (CAA).

When the Birmingham Area was redesignated to attainment, Alabama was also required to submit a maintenance plan which included provisions for contingency measures should the Area violate the standard after being redesignated to attainment. The May 12, 2006, maintenance plan was designed to keep the Birmingham Area in attainment through 2017, initially, with a later extension of the maintenance plan to include a time period of no less than 20 years after the Area was redesignated originally. After attaining the 1997 8-hour ozone standard based on 2003–2005 ambient air monitoring data, the Birmingham Area violated the standard with 2004–2006 ambient air monitoring data. The February 6, 2008, SIP revision, provided by Alabama for EPA approval, was submitted to fulfill ADEM’s commitment to adopt within 18 months of a violation of the 1997 8-hour ozone standard, one or more contingency measures to help the Area re-attain the

standard. EPA is approving these revisions pursuant to section 110 of the CAA. On March 27, 2008, EPA issued a revised ozone standard (see, 73 FR 16436). This action, however, is being taken to address requirements under the 1997 8-hour ozone standard. EPA will address the Birmingham compliance with the 2008 8-hour ozone standard in the future.

**DATES:** This rule is effective on *September 28, 2009* without further notice, unless EPA receives adverse comment by August 31, 2009. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2008-0592 by one of the following methods:

1. *http://www.regulations.gov*: Follow the online instructions for submitting comments.

2. *E-mail*: [benjamin.lynora@epa.gov](mailto:benjamin.lynora@epa.gov).

3. *Fax*: (404) 562-9019.

4. *Mail*: “EPA-R04-OAR-2008-0592,” 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.

5. *Hand Delivery or Courier*: Ms. Lynora Benjamin, Chief, 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. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. “EPA-R04-OAR-2008-0592.” EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you

provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the 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. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Stacy Harder, 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. Ms. Harder may be reached by phone at (404) 562-9042, or by electronic mail at [harder.stacy@epa.gov](mailto:harder.stacy@epa.gov). For information relating to the Alabama SIP, contact Mr. Zuri Farngalo by phone at (404) 562-9152, or by electronic mail at [farngalo.zuri@epa.gov](mailto:farngalo.zuri@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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- I. Background
- II. Analysis of State's Submission
- III. Final Action
- IV. Statutory and Executive Order Reviews

### I. Background

On April 15, 2004, EPA designated the Birmingham Area as nonattainment for the 1997 8-hour ozone standard under title 1, part D, subpart 1 of the CAA. For the 1997 8-hour ozone standard the Birmingham Area is comprised of Jefferson and Shelby Counties in Alabama. EPA's designations for the 1997 8-hour ozone standard were published in the **Federal Register** on April, 30 2004, (69 FR 23858) and became effective on June 15, 2004. As an area designated as nonattainment for the 1997 8-hour ozone standard under Subpart 1 of the CAA, the Birmingham Area had a required attainment date of "as expeditiously as practicable" but no later than June 15, 2009.

On November 16, 2005, after air quality data indicated improvements, ADEM submitted a request for EPA to redesignate the Birmingham Area to attainment for the 1997 8-hour ozone standard. Also, as required, ADEM submitted for EPA approval, the initial maintenance plan to show continued maintenance for the first 11 years of the 20 year maintenance period. ADEM's redesignation request was based on three years, 2003 to 2005, of ambient monitoring data for the Birmingham Area, which indicated the Birmingham Area had a design value of 0.072 parts per million (ppm). The design value for the Birmingham Area based on 2004–2006 was 0.078 ppm. Both the 2003–2005 and the 2004–2006 design values met the requirement of 0.080 ppm for attainment for the 1997 8-hour ozone standard.

In an action published on January 25, 2006, (71 FR 4077), EPA proposed to approve the redesignation of the Birmingham Area to attainment. EPA also proposed approval of the State's plan for maintaining the 1997 8-hour ozone NAAQS through the initial period of 2006–2017 as a SIP revision. ADEM submitted a final, adopted SIP revision and redesignation request to EPA on January 27, 2006. On May 12, 2006, EPA published a final rule in the **Federal Register** (71 FR 27631), effective June 12, 2006, which approved the redesignation request and changed the legal designation of Jefferson and Shelby Counties in Alabama from nonattainment to attainment for the 1997 8-hour ozone standard. This rule also approved ADEM's 8-hour ozone maintenance plan for the 1997 standard

for the Birmingham Area pursuant to section 175A of the CAA.

Section 175A of the CAA, requires a maintenance plan to become part of the SIP for areas redesignated to attainment and provide for maintenance of the air quality in the affected area for at least 20 years after the redesignation. Specifically, the CAA requirement is that an initial maintenance plan that is at least 10 years in length (*i.e.*, after EPA's expected approval) be submitted with the redesignation request. Subsequently, eight years after redesignation and submittal of the initial maintenance plan, the State is required to submit an additional maintenance plan that shows continued maintenance for the remainder for a 20-year period. Alabama chose 2017 as the end year for the initial maintenance plan for the Birmingham Area. Also included in Alabama's initial maintenance plan were contingency provisions as required by section 175(d) of the CAA. The purpose of the contingency provisions is to provide for prompt corrections for any violation of the standard that occurred in an area that was redesignated from nonattainment to attainment.

In its May 12, 2006, maintenance plan, Alabama committed to adopt within 18 months of a violation of the 1997 8-hour ozone standard, one or more control measures to help the area attain the standard. The plan stated that the State of Alabama would use actual ambient monitoring as the indicator or trigger to determine when these contingency measures would be implemented. In accordance with 40 CFR 58, ambient ozone monitoring data that indicates a future violation of the ozone NAAQS will begin the process to implement contingency measures. In the event that an individual monitor in the nonattainment area recorded an annual fourth high reading of 0.085 ppm or higher, or if periodic emissions inventory updates revealed excessive or unanticipated growth greater than 10 percent in emission of either ozone precursor, ADEM agreed in the May 12, 2006, maintenance plan that the State would evaluate existing control measures to determine whether any further emission reduction measures should be implemented. Under Section 175A(d), the minimum requirements for these contingency measures required the implementation of all measures that were contained in the SIP before the redesignation.

The Helena monitor, located in Shelby County and typically the controlling monitor for the Birmingham Area, violated the 1997 8-hour ozone NAAQS during 2004–2006 data with a

reading of 0.085 ppm, although the overall design value for the Birmingham Area for that same period was 0.078 ppm. Under Section 175A(d), the minimum requirements for these contingency measures require the implementation of all measures that were contained in the SIP prior to the redesignation. Alabama has maintained all measures that were contained in the SIP prior to the redesignation. Also, in accordance with requirements of the CAA, Alabama committed to adopt one or more contingency measures within 18 months of a violation of the 1997 8-hour ozone standard, in order to reattain the standard. To help correct the violation, Alabama evaluated and subsequently identified nitrogen oxide (NO<sub>x</sub>) controls for installation at two facilities in the Birmingham Area. More information on Alabama's analysis is provided below. Additional measures may be necessary in the future; however, these revisions qualify as contingency measures under the requirements of Section 175A(d) of the CAA.

### II. Analysis of State Submission

On February 6, 2008, Alabama submitted a SIP revision to EPA for approval to incorporate into the SIP specific contingency measures to help the Birmingham Area attain the 1997 8-hour ozone standard. Specially, the February 6, 2008, submittal provided for controls at Lehigh Cement in Jefferson County and Lafarge Building Materials in Shelby County. After an extensive study in the early 1990s, for ozone formation in the Birmingham Area, Alabama concluded the best focus was on a reduction on NO<sub>x</sub> emissions as opposed to Volatile Organic Compounds.

Both the Lehigh Cement facility in Jefferson County and the Lafarge Building Materials facility in Shelby County operate cement kilns that combust coal and utilize low NO<sub>x</sub> burners to minimize emissions. The Lehigh kiln is a preheater type kiln while the Lafarge kiln is a preheater/precalciner kiln. NO<sub>x</sub> is generated in the kilns during combustion through the oxidation of fuel-bound nitrogen (fuel NO<sub>x</sub>) and by the oxidation of atmospheric nitrogen (thermal NO<sub>x</sub>). NO<sub>x</sub> control can be achieved by minimizing the creation of NO<sub>x</sub> in the combustion device (*i.e.*, low NO<sub>x</sub> burners) and by the addition of add-on controls. Selective Noncatalytic Reduction (SNCR) is a post-combustion (add-on) technology that was installed, and is based on the chemical reduction of NO<sub>x</sub> into molecular nitrogen (N<sub>2</sub>) and water vapor (H<sub>2</sub>O). A nitrogen based

reducing agent (reagent), such as ammonia or urea, is injected into the post-combustion flue gas. The reduction reactions that occur due to the operation of the SNCR reduce the amount of NO<sub>x</sub> emitted into the atmosphere.

Alabama's February 6, 2008, SIP revision requests to include specific provisions into the SIP related to the permits for the Lafarge and Leigh cement kilns. Specifically, Alabama is including the following for incorporation into the SIP, which can be found in Appendix A of the submittal:

Lafarge: Fuel Processing & Handling Cement Kiln & Clinker Cooler Area 300:

*Emissions Standards:* 15 & 16.

*Compliance and Performance Test Methods and Procedures:* 10.

*Emissions Monitoring:* 8, 9, & 10.

*Recordkeeping and Reporting Requirements:* 8.

*Lehigh: Emissions Unit No. 005 = Rotary Kiln*

*Permit Conditions:* 45–48.

The permit conditions for the cement kiln (Emissions Unit No. 5) at Lehigh Cement and the cement kiln at Lafarge were adopted in early 2008 after a public comment period for these revisions. Specifically, the public comment period for the Lafarge permit revisions was September 19 through October 19, 2007. The public comment period for the Lehigh permit revisions was July 23 through August 21, 2007. The revised permits can be found in Appendix A of Alabama's February 6, 2008, SIP revision.

According to ADEM's February 6, 2009 submittal, it is projected that an overall NO<sub>x</sub> reduction of 20–25 percent is expected from the two plants as a result of the installation of the SNCR. Specifically, 2009 ozone season NO<sub>x</sub> emissions were projected to be approximately 1,149 and 651 tons from Lehigh and Lafarge, respectively. Therefore, it is expected that the installation of the SNCRs should result in an approximate ozone season NO<sub>x</sub> reduction of 360–450 tons.

### III. Final Action

EPA is taking direct final action to approve specific permit conditions for two cement kilns in the Birmingham Area as implemented contingency measures. The specific conditions were provided to fulfill ADEM's requirement to address a violation of the 1997 8-hour ozone standard for the Birmingham Area. After careful evaluation, EPA has determined that ADEM's submittal meets the applicable requirements of the CAA and EPA regulations, and is consistent with EPA policy.

EPA is publishing this rule without prior proposal because the Agency

views this as a non-controversial revision 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 comment be filed. This rule will be effective on *September 28, 2009* without further notice unless the Agency receives adverse comment by *August 31, 2009*. 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 public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised this rule will be effective on *September 28, 2009* and no further action will be taken on the proposed rule.

### IV. 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. 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 Alabama 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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);

- 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). In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not 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 September 28, 2009. 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, Intergovernmental relations, Incorporation by reference, Ozone, Nitrogen dioxides, Reporting

and recordkeeping requirements, Volatile organic compounds.

Dated: July 16, 2009.

**J. Scott Gordon,**

*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 B—Alabama**

■ 2. Section 52.50(d), is amended by adding new entries to the table for “Lafarge Cement Kiln” and “Lehigh Cement Kiln” to read as follows:

**§ 52.50 Identification of plan.**

\* \* \* \* \*  
(d) \* \* \*

**EPA-APPROVED ALABAMA SOURCE SPECIFIC REQUIREMENTS**

Name of source	Permit No.	State submittal date/effective date	EPA approval date	Explanations
Lafarge Cement Kiln .....	AB70004_1_01 .....	2/6/2008	7/30/2009 [Insert citation of publication].	Certain provisions of the permit.
Lehigh Cement Kiln .....	4-07-0290-03 .....	2/6/2008	7/30/2009 [Insert citation of publication].	Certain provisions of the permit.

\* \* \* \* \*

[FR Doc. E9-18026 Filed 7-29-09; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-0296; FRL-8936-6]

**Revisions to the California State Implementation Plan, San Joaquin Valley Air Pollution Control District**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of revisions to the San Joaquin Valley Air Pollution Control District portion of the California State Implementation Plan

(SIP). These revisions were proposed in the **Federal Register** on June 8, 2009 and concern volatile organic compound (VOC) emissions from organic solvent cleaning and degreasing operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** *Effective Date:* This rule is effective on August 31, 2009.

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-0296 for this action. The index to the docket is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in

either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Nicole Law, EPA Region IX, (415) 947-4126, [Law.Nicole@epa.gov](mailto:Law.Nicole@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to EPA.

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- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Statutory and Executive Order Reviews

**I. Proposed Action**

On June 8, 2009 (74 FR 27084), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVAPCD .....	4662	Organic Solvent Degreasing Operations .....	09/20/07	03/07/08
SJVAPCD .....	4663	Organic Solvent Cleaning, Storage, and Disposal .....	09/20/07	03/07/08

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

**II. Public Comments and EPA Responses**

EPA’s proposed action provided a 30-day public comment period. During this period, we received no comments.

**III. EPA Action**

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

**IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the

provisions of the Act and applicable Federal regulations. 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 Clean Air Act. 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