

when certain monies which a participant pays to, or has withheld by, an employer for contribution to an employee benefit plan are "plan assets" for purposes of Title I of the Act is rescheduled to Thursday, February 22, 1996 and, if necessary, to Friday, February 23, 1996.

Signed at Washington, DC, this 19th day of January 1996.

Olena Berg,

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 96-1136 Filed 1-23-96; 8:45 am]

BILLING CODE 4510-29-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[DE24-1-7156b; FRL-5401-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Delaware Ozone Emission Inventory

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Delaware for the purpose of establishing 1990 ozone base year emission inventories for the Delaware ozone nonattainment areas. In the Final Rules section of this Federal Register, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views them as noncontroversial SIP revisions 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 proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. 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.

**DATES:** Comments must be received in writing by February 23, 1996.

**ADDRESSES:** Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public

inspection during normal business hours at the EPA office listed above; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 597-3164, at the EPA Region III address above.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title (Delaware Ozone Emission Inventory) which is located in the Rules and Regulations section of this Federal Register.

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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: November 27, 1995.

Stanley Laskowski,

*Acting Regional Administrator, Region III.*

[FR Doc. 96-921 Filed 1-23-96; 8:45 am]

BILLING CODE 6560-50-P

### 40 CFR Part 52

[VA25-1; A-1-FRL-5402-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia—Prevention of Significant Deterioration Program

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to disapprove or, in the alternative, to conditionally approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision, consisting of two parts, establishes a program for prevention of significant deterioration of air quality (PSD). The first part includes Virginia's regulations and procedures for a PSD program. The second part includes amendments to those regulations submitted as part of the SIP revision. The intended effect of this action is to propose disapproval or, in the alternative, approval of Virginia's request to amend its SIP to satisfy federal new source review requirements for the preconstruction permitting of new sources and modifications in attainment and unclassifiable areas, on the condition that deficiencies in the state program are corrected and submitted within one year of approval.

This action is being taken under the Clean Air Act (CAA).

**DATES:** Comments must be received on or before February 23, 1996. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

**ADDRESSES:** Comments may be mailed to Marcia L. Spink, Associate Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, and at the Virginia Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia, 23240.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Donahue (215) 597-2923, at the EPA Region III address above.

**SUPPLEMENTARY INFORMATION:** In a series of submittals, the Virginia Department of Air Pollution Control (DAPC), now known as the Department of Environmental Quality (VDEQ), submitted the elements for a revision to its SIP that would establish a program for the prevention of significant deterioration of air quality (PSD) in the review and permitting of new major sources and major modifications (the PSD program). On December 17 and 18, 1992, the VDEQ transmitted a request for the approval of the Commonwealth's regulations for PSD and its "Procedures for Implementation of Prevention of Significant Deterioration (PSD) of Air Quality Program (AQP-11)", a non-regulatory procedures document, as a revision to the Virginia State Implementation Plan. Specifically, the December 17, 1992 submittal included AQP-11, and the December 18, 1992 submittal consisted of Virginia Regulation for the Control and Abatement of Air Pollution, § 120-08-02 Permits—Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas. On February 3, 1993, DAPC sent a Summary of Public Testimony and Response Thereto in order to satisfy federal SIP revision completeness criteria. On February 18, 1993 DAPC sent Virginia Regulations Appendix L, also to be included in the SIP revision. On August 16, 1993 the VDEQ submitted a supplementary revision to § 120-01-01 and 120-08-02 to correct deficiencies in its earlier PSD regulations.

If Virginia's PSD regulations are disapproved by EPA the current federal implementation plan (FIP) for PSD in Virginia at 40 CFR 52.2451 and the delegation agreement between EPA and Virginia will continue to be in effect. If Virginia's PSD regulations are approved by EPA, the state will have authority to implement and enforce the PSD program through its SIP, the current FIP at 40 CFR 52.2451 will be withdrawn, and the delegation agreement between EPA and Virginia will be terminated.

#### Background

On June 19, 1978, EPA promulgated the PSD regulations of 40 CFR 52.21 (b) through (w) into the Virginia SIP at 40 CFR 52.2451 and federally implemented the PSD program in Virginia. As of June 3, 1981, authority for implementation of the Federal PSD program was delegated to the Commonwealth of Virginia, and Virginia began issuing and enforcing Federal PSD permits. On September 20, 1991, Virginia was granted the authority to implement and enforce the nitrogen dioxide (NO<sub>2</sub>) increment portion of the federal PSD program.

On June 3, 1993 (58 FR 31636), EPA promulgated rules which revised the PSD requirement for particulate matter (PM). The revised increments for PM restrict increases in ambient concentrations of PM-10, which is defined as particles with an aerodynamic diameter of less than or equal to 10 micrometers. The revisions affect the regulations of 40 CFR parts 51 and 52 which specify the increments for PM, and became effective on June 3, 1994. On July 20, 1993 (58 FR 38822), EPA promulgated rules which revised the "Guidelines for Air Quality Models" by adding a 1993 supplement to the Guidelines. The revisions affect the regulations of 40 CFR parts 51 and 52 which specify the version of the guidelines, and became effective on August 19, 1993. Virginia must still revise its regulations to include the PM-10 increment and modeling guideline provisions and submit them as a revision to the SIP. However, EPA does not believe that it should delay the processing of the SIP revisions relating to PSD which Virginia has already submitted because of the need for additional revisions pertaining to PM-10 and modeling guidelines.

EPA proposes to retain authority, under 40 CFR 52.21, for implementing and enforcing all Virginia PSD permits, or portions thereof, involving requirements related to PM-10. EPA also proposes to keep its current delegation of authority to Virginia to issue PSD permits in effect insofar, and only insofar, as PSD requirements

pertaining to PM-10 are concerned. On October 16, 1995, Virginia published a "Notice of Intended Regulatory Revision UU Concerning Prevention of Significant Deterioration" and notified EPA of its intent. The purpose of the proposed action is to amend Virginia's PSD regulation to make it conform with federal PSD PM-10 increment and modeling guideline provisions. EPA solicits comments on this issue.

#### Summary and Analysis of Virginia's Submittal

In the first part of the Commonwealth's submittal, the Commonwealth requested that the "Virginia Regulations for the Control and Abatement of Air Pollution for Prevention of Significant Deterioration, § 120-08-02 and Appendix L", and "Air Quality Program Policies and Procedures for Implementation of Prevention of Significant Deterioration (PSD) of Air Quality Program (AQP-11)" be added to the Virginia State Implementation Plan.

Virginia's submittal included four commitments. The first commitment, to adopt certain regulatory changes and submit them for EPA approval, is addressed in this notice. The other three commitments were: the state will "transmit to the Regional Administrator or his designee a copy of each permit application relating to a major stationary source or major modification, and provide notice to the Regional Administrator of every action related to the consideration of such permit," "make a positive determination of completeness of an application and will notify the applicant whether or not the application is complete," and "perform a periodic assessment" of the PSD SIP.

The second part of Virginia's submittal, consisting of amendments to Virginia Regulation § 120-08-02, Permits for Major Stationary Sources and Major Modifications in Prevention of Significant Deterioration Areas, and Appendix L, Prevention of Significant Deterioration Areas, was submitted on August 16, 1993. These corrections to the PSD regulations included certain elements necessary for federal approval of the state PSD program. The August 16, 1993 part of the submittal also included a revision to general definitions for Class I, II, and III areas, at § 120-01-02, Terms Defined.

The provisions of Virginia Regulation § 120-08-02 apply to the construction of any major source or major modification in areas that are designated attainment or unclassifiable for the National Ambient Air Quality Standards (NAAQS). Specific applicable geographic locations in Virginia are

designated in Appendix L of the regulations. Through the definitions of major source and major modification equivalent to federal definitions, Virginia's regulations capture the correct universe of sources for the PSD program. Each new source or modification is required to apply Best Available Control Technology (BACT) and demonstrate that the proposed source or modification would not cause or contribute to air pollution in violation of a NAAQS in any Air Quality Control Region or an applicable maximum allowable increase over the baseline concentration (increment) in any area.

Regulation 120-01-02, Terms Defined, was included in the August 16, 1993 supplement to the submittal. The definitions of Class I, II, and III geographic locations in Virginia that are applicable to PSD are designated in Appendix L of the regulations and defined by locality for criteria and other pollutants. Appendix L classifies PSD areas, which include two federal Class I areas, James River Face Wilderness Area and Shenandoah National Park. Virginia has no Class III areas.

The procedures used to determine increment allocation, consumption and protection, established in Virginia's AQP-11, are consistent with federal regulations. Under Virginia's program, increment is allocated to permit applicants on a sequential basis at the time an application is determined to be complete. Increment consumption shall be calculated using the most recent representative meteorological data. Any PSD applicant shall be required to demonstrate through air quality modeling that emissions increases would not cause or contribute to any violation of allowable increments within a Class I area if: (1.) the applicant proposes to construct or modify within 100 kilometers of a Class I area, (2.) EPA believes a demonstration is necessary, even though the applicant will be constructing beyond 100 kilometers, or (3.) Virginia believes the change in question may appreciably affect increment consumption in the Class I area. Virginia's regulations also include the requirements of 40 CFR 51.166(p) for sources impacting federal class I areas. In § 120-08-02 and AQP-11, Virginia cites and will use EPA's Guideline on Air Quality Models and EPA guidance regarding "Class I Area Significant Impact Levels and Modeling Class I Area Impacts" for increment analysis and maintenance of the NAAQS. An inventory of emissions that consume Class I increment will be maintained by the Commonwealth. AQP-11 also outlines steps to prevent

increment violations and to respond to a Federal Land Manager who has determined that a proposed emissions increase would have an adverse impact on the air quality related values.

The PSD provisions of the CAA emphasize the importance of public participation in permitting decisions. See section 160(5) of the CAA. In addition, section 165(a)(2) of the CAA provides that no PSD permit shall be issued unless a "public hearing has been held with opportunity for interested persons including representatives of the Administrator to appear and submit written or oral presentations on the air quality impacts to the source, alternatives thereto, control technology requirements, and other appropriate considerations." See also section 40 CFR 51.166(q)(2)(v). Further, 40 CFR 51.166(a)(1) provides that "[i]n accordance with the policy of section 101(b)(1) of the CAA and the purposes of section 160 of the CAA, each applicable State implementation plan shall contain emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality." See also section 161 of the CAA.

EPA interprets existing law and regulations to require an opportunity for state judicial review of PSD permit actions under approved PSD SIPs by permit applicants and affected members of the public in order to ensure an adequate and meaningful opportunity for public review and comment on all issues within the scope of the permitting decision, including environmental justice concerns and alternatives to the proposed source. The EPA believes that an opportunity for public review and comment, as provided in the statute and regulations, is seriously compromised where an affected member of the public is unable to obtain judicial review of an alleged failure of the state to abide by its PSD SIP permitting rules. Accordingly, all such persons, as well as the applicant, must be able to challenge PSD permitting actions in a judicial forum.

In Section 307(b) of the CAA, Congress expressly provided an opportunity for judicial review of PSD permitting decisions when EPA is the permitting authority. In a federal PSD program (PSD FIP) such as the one currently in effect in Virginia, any member of the public who has participated in the public comment process and meets the threshold standing requirements of Article III of the U.S. Constitution may petition for administrative review of the permit within 30 days of issuance and ultimately seek judicial review of the

administrative disposition of the permit. There is no indication that Congress intended that citizens' rights would be diminished upon the EPA approval of a state's PSD program.

Similarly, Congress has provided citizens the ability to challenge the failure of a major source to obtain the PSD permit required under Part C of the CAA or the violation of such permit in Federal district court under the citizen suit provisions of section 304(a)(3), regardless of whether the permitting authority is the EPA or a State. The operative language of section 304(a)(3) could be read as equivalent to the federal New Source Review (NSR) enforcement provisions of sections 113(a)(5) and 167, as enabling challenges to both construction without any permit and construction without a permit that satisfies applicable NSR requirements. The EPA believes that the better view is that expressed in the legislative history of the 1977 Amendments, which directed citizen challenges to State court: "[i]n order to challenge the legality of a permit which a State has actually issued, or proposes to issue, under [the PSD provisions of the CAA] however, a citizen must seek administrative remedies under the State permit consideration process, or judicial review of the permit in State court." Staff of the Subcommittee on Environmental Pollution of the Senate Committee on Environment and Public Works, 95th Congress, 1st Session, A Section-by-section Analysis of S. 252 and S. 253, Clean Air Act Amendments 36 (1977), reprinted in 5 Legislative History of the Clean Air Act Amendments of 1977 (1977 Legislative History) 3892 (1977). The EPA believes that Congress intended such opportunity for state judicial review of PSD permit actions to be available to permit applicants and at least those members of the public who can satisfy threshold standing requirements under Article III of the Constitution.

Currently, under the PSD FIP in effect in Virginia, a Virginia citizen can petition EPA to conduct an administrative review of a PSD permit issued by Virginia (under a delegation agreement with EPA) and seek judicial review of the final permitting action in federal court. In sharp contrast, section 10-1.1318(B) of the Code of Virginia extends the right to seek judicial review only to persons who have suffered an "actual, threatened, or imminent injury \* \* \*" where "such injury is an invasion of an immediate, legally protected, pecuniary and substantial interest which is concrete and particularized \* \* \*" The Virginia statute, as well as Virginia case law,

does not enable any member of the public who participated in the public comment process on a PSD permit and who meets the threshold standing requirements of Article III of the Constitution to obtain judicial review of the permit in the Commonwealth's court system.

The limited judicial review in Virginia thus does not meet the minimum requirements for standing for judicial review required for PSD SIP programs under the CAA and EPA's implementing regulations. Therefore, the EPA is proposing to disapprove Virginia's PSD submittal. The EPA solicits comment on this view, and, in the alternative, proposes to approve the submittal should EPA conclude that such judicial standing is not required for approval of a PSD SIP.

EPA has noted that some of Virginia's definitions do not conform with the Clean Air Act Amendments (CAAA) of 1990, although they do conform with federal regulations. EPA does not believe that this affects the decision-making process for this proposed rulemaking action. EPA is currently in the process of making changes to federal regulations at 40 CFR parts C and D to comply with the CAAA. When EPA promulgates changes to the PSD regulations, all states will be required to comply with the new federal regulations, either through SIP revisions or updated delegation agreements. Specific timetables for those changes will be included in the rulemaking notice.

EPA's review of this material indicates that, with the exception of the issue highlighted above, Virginia's regulations and procedures are sufficient to implement and enforce a PSD program. A more detailed evaluation of Virginia's regulations for PSD can be found, in this rulemaking's docket file, in a memorandum entitled "Revision to the Commonwealth of Virginia Implementation Plan for Prevention of Significant Deterioration of Air Quality—Technical Support Document". Copies of that document are available upon request from the EPA regional office listed in the **ADDRESSES** section of this notice.

#### Proposed Action

If the Agency determines, after reviewing public comment on this issue, that Virginia's PSD program must provide access to judicial review on a PSD permit to any party who participates in the public comment process and who meets the threshold standing requirements of Article III of the U.S. Constitution, EPA will disapprove the SIP revision submitted

by Virginia. Alternatively, if the Agency determines, after reviewing public comment on this proposal, that provisions for judicial review are unnecessary, and that Virginia's PSD program, with the exception of the PM-10 and modeling guideline provisions, meets the requirements of the CAA applicable to state PSD Programs, EPA will conditionally approve the SIP revision. In order to correct the deficiencies, Virginia must amend the Virginia Regulations and AQP-11 to meet the current federal PSD requirements at 40 CFR part 51 by addressing the PM-10 and modeling guideline provisions. The program amendments must be submitted within one year of conditional approval. If Virginia fails to revise and submit the amendments within one year, the conditional approval will convert to a disapproval.

EPA is soliciting public comments on Virginia's SIP submittal, and, in particular, on the issues discussed in this notice. These comments will be considered before taking final action. Interested parties may submit written comments to the EPA Regional office listed in the ADDRESSES section of this notice.

EPA is proposing to disapprove or, in the alternative, conditionally approve Virginia's request to revise the Commonwealth's SIP to include Virginia Regulation for the Control and Abatement of Air Pollution, § 120-08-02, permits for major sources and major modifications located in prevention of significant deterioration areas, and Appendix L, prevention of significant deterioration areas; and Air Quality Program Policies and Procedures for Implementation of Prevention of Significant Deterioration (PSD) of Air Quality Program, AQP-11. EPA is also proposing to disapprove or, in the alternative, conditionally approve supplementary revisions to § 120-01-02, § 120-08-02, and Appendix L. For conditional approval, Virginia must amend the program as specified above to satisfy the applicable federal PSD requirements of 40 CFR part 51, subpart I. With the exception of the PM-10 requirements, the Commonwealth will have authority to implement and enforce the PSD program through its SIP, and the delegation agreement will be terminated. EPA will retain authority under 40 CFR § 52.21, for implementing and enforcing all Virginia PSD permits, or portions thereof, involving requirements related to PM-10 until a SIP revision for PM-10 increments and modeling guidelines is approved. EPA's current delegation of authority to Virginia to issue PSD permits will

remain in effect insofar, and only insofar, as PSD requirements pertaining to PM-10 are concerned. If Virginia later submits, as the October 16, 1995 "Notice of Intended Regulatory Action" indicates, and receives EPA approval of a revision to the Virginia PSD SIP incorporating the PM-10 increments and modeling provisions, the delegation agreement will be completely terminated.

If these revisions to the PSD requirements of the Virginia SIP are approved, EPA will continue to oversee implementation of this important program by reviewing and commenting on proposed permits with respect to applicable statutory and regulatory provisions and guidance. Also, EPA will implement and enforce the PM-10 increment standards until such time as EPA receives and approves a revision to the Virginia SIP incorporating those standards into the SIP. If a final permit is issued which still does not reflect consideration of the relevant factors, EPA may deem the permit inadequate for purposes of implementing the requirements of the Act and Virginia's SIP, and may consider enforcement action under sections 113 and 167 of the Act to address the permit deficiency.

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 disapprovals or conditional approvals under section 110 and subchapter I, Part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP disapproval or approval in this situation does not impose any new requirements, the Administrator certifies 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 flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

Under Section 202 of the Unfunded Mandates Reform Act of 1995

("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposal or final that includes a Federal mandate that may result in estimated costs to state, local or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. This federal action disapproves, or conditionally approves pre-existing requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to disapprove, or in the alternative, to conditionally approve Virginia's SIP revision for the Prevention of Significant Deterioration Program will be based on whether it meets the applicable requirements of the Clean Air Act and of the EPA regulations in 40 CFR part 51.

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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: December 15, 1995.

Stanley L. Laskowski,

*Acting Regional Administrator, Region III.*

[FR Doc. 96-1051 Filed 1-23-96; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 152

[OPP-250112; FRL-4988-8]

#### **Pesticide and Ground Water State Management Plan Regulation; Notification to the Secretary of Agriculture**

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

**ACTION:** Proposed rule; notification to Secretary of Agriculture.

**SUMMARY:** Notice is given pursuant to section 25(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), that the Administrator of the Environmental Protection Agency (EPA) has forwarded to the Secretary of