

(A) Remainder of January 20, 1994 State submittal pertaining to Regulation 24, sections 50(a)(5) and 50(b)(30) referenced in paragraph (c)(48)(i) of this section.

(49) Revisions to the Delaware State Implementation Plan submitted on February 17, 1995 by the Delaware Department of Natural Resources & Environmental Control:

(i) Incorporation by reference.

(A) Letter of February 17, 1995 from the Delaware Department of Natural Resources & Environmental Control transmitting Regulation 13—Open Burning, effective February 8, 1995.

(B) Regulation 13—Open Burning, effective February 8, 1995.

(C) Administrative changes to Regulation 1, Definitions and Administrative Principles: addition of the following definitions: “ceremonial fires”, “conservation practices”, “prescribed burning”, and “silviculture”; and revision to the following definitions: “open burning”, “rubbish”, and “trade waste” adopted February 8, 1995.

(ii) Additional material.

(A) Remainder of the February 17, 1995 State submittal pertaining to Regulation 13—Opening Burning referenced in paragraph (c)(49)(i) of this section.

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40 CFR Part 52

[VA021-5015; FRL-5697-9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Rule Pertaining to VOC RACT Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to amendments to Virginia’s reasonably available control technology (RACT) requirements for major stationary sources of volatile organic compounds (VOCs) located in the Richmond moderate ozone nonattainment area and the Northern Virginia portion of the Metropolitan Washington D.C. serious ozone nonattainment area. The intended effect of this action is to approve the submitted amendments to Virginia’s major source VOC RACT requirements because they strengthen Virginia’s SIP.

This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on April 11, 1997.

ADDRESSES: 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, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 566-2092.

SUPPLEMENTARY INFORMATION:

I. Background Information

A formal SIP revision was submitted by Virginia on November 6, 1992 amending its VOC RACT regulation applicable to non-CTG sources. Non-CTG sources are those major stationary sources or categories of stationary sources of VOC that are not otherwise subject to RACT by a SIP-approved regulation developed pursuant to a control technique guideline (CTG) document.

On September 27, 1995, EPA published a direct final approval of the SIP revision (60 FR 49767). The intended effect of this action was to approve the amendments Virginia submitted for its major source VOC RACT requirements because those amendments strengthened the SIP and satisfied the “RACT Catch-Up” requirements of section 182 (a)(2)(A) of the Clean Air Act (the Act). EPA issued the direct final rulemaking without prior proposal because the Agency viewed it as noncontroversial and anticipated no adverse public comments. The final approval was published in the Federal Register with a provision for a 30 day comment period (60 FR 49767). Concurrently, a notice of proposed rulemaking (NPR) pertaining to the same amendments to Virginia’s VOC RACT requirements was also published in the Federal Register on September 27, 1995 (60 FR 49813). EPA announced that the final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the final rule. Since EPA received one adverse comment regarding the direct final rule during the prescribed comment period, the final rule converted to a proposal, and on

December 8, 1995 (60 FR 62990), EPA withdrew its otherwise effective date.

Today’s final rulemaking action addresses the comment received during the public comment period and announces EPA’s final action on this SIP revision. Other specific requirements of VOC RACT “Catch-Ups” and the rationale for EPA’s action were explained in the rulemaking notices published on September 27, 1995 and will not be restated here.

II. Public Comment and EPA’s Response

One letter of comment was submitted on the action taken by EPA on September 27, 1995. The letter was submitted on behalf of the Bear Island Paper Company on October 26, 1995. The following discussion summarizes and responds to the comments received.

Comment: The commenter stated that EPA should not approve the revision to Virginia’s SIP because the regulation does not address circumstances where, despite the best efforts of Virginia and the subject source, the compliance deadline cannot be met because an appropriate RACT level cannot be determined within a timely fashion. The commenter suggests that the SIP revision be rewritten to set forth a new compliance deadline or, alternatively, set forth a mechanism for establishing a new deadline. The commenter argues that these provisions are warranted because EPA has not issued the relevant guidance documents required by section 183 of the CAA. The commenter asserts that Virginia has not been able to rely on EPA guidance in determining RACT for many sources.

EPA Response: EPA disagrees with the commenter’s remarks. The Commonwealth of Virginia chose the appropriate deadline of May 31, 1995, for compliance of all Non-CTG sources subject to RACT. The May 31, 1995 deadline for compliance with RACT was established in the CAA section 182(b)(2). Section 182(b)(2) requires states to submit SIP revisions requiring RACT on major stationary sources of VOCs that “provide for the implementation of the required measures as expeditiously as practicable but no later than May 31, 1995.” Sources wishing to receive an extension of the RACT compliance deadline have the ability to request a compliance date extension from the Commonwealth of Virginia. In those instances where a source can clearly demonstrate the need for a compliance date extension from a SIP regulation’s deadline, and the Commonwealth of Virginia determines such a compliance date extension is justifiable, the Commonwealth may

request a approval of a source-specific SIP revision.

III. Final Action

EPA is approving the revisions to Virginia rule § 120-04-0407 "Standard for Volatile Organic Compounds" submitted on November 6, 1992 as a revision to the Virginia SIP.

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

IV. Administrative Requirements

A. Executive Order 12866

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.

B. Regulatory Flexibility Act

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 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 approval does not impose any new requirements, EPA 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).

C. Unfunded Mandates

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 proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to 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.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 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 the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve revisions to the Virginia SIP VOC control requirements must be filed in the United States Court of Appeals for the appropriate circuit by May 12, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be

challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Dated: February 25, 1997.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

Chapter I, title 40, of the 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 VV—Virginia

2. Section 52.2420 is amended by adding paragraphs (c)(106) to read as follows:

§ 52.2420 Identification of plan.

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(c) * * *

(106) Revisions to the Virginia State Implementation Plan submitted on November 6, 1992 by the Virginia Department of Environmental Quality:

(i) Incorporation by reference.

(A) Letter of November 6, 1992 from the Virginia Department of Environmental Quality transmitting revisions to Virginia's State Implementation Plan, pertaining to volatile organic compound requirements in Virginia's air quality regulations adopted by the Virginia State Air Pollution Control Board on October 30, 1992 and effective on January 1, 1993.

(B) Revisions to § 120-04-0407 (A), (B), and (C) that lower the applicability threshold for RACT to 50 tons per year in the Virginia portion of the Metropolitan Washington, D.C. serious ozone nonattainment area and add a RACT compliance date of May 31, 1995 for major VOC sources in the Richmond moderate ozone nonattainment area, and the Virginia portion of the Metropolitan Washington, D.C. nonattainment area, effective January 1, 1993.

(ii) Additional material.

(A) Remainder of State submittal pertaining to § 120-04-0407.

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