

Dated: May 1, 2000  
**William C. Early,**  
*Acting Regional Administrator, Region III.*  
 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 V—Maryland**

2. Section 52.1070 is amended by adding paragraphs (c)(161) to read as follows:

**§ 52.1070 Identification of plan.**

\* \* \* \* \*  
 (c) \* \* \*  
 (161) Revisions to the State of Maryland Regulations pertaining to the repeal of COMAR 26.11.11.04, Petroleum Refineries, submitted on January 4, 2001, by the Maryland Department of the Environment:  
 (i) Incorporation by reference.  
 (A) Letter of January 4, 2001, from the Maryland Department of the Environment transmitting amendments to COMAR 26.11.11 to repeal Regulation 26.11.11.04, Petroleum Refineries.  
 (B) Amendments to COMAR 26.11.11, Control of Petroleum Products Installations, including Asphalt Paving and Asphalt Concrete Plants, repealing Regulation 26.11.11.04, Petroleum Refineries, effective October 5, 1998.

(ii) Additional Material. Remainder of the January 4, 2001 submittal pertaining to the repeal of COMAR 26.11.11.04, Petroleum Refineries.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 169-0238; FRL-6980-4]

**Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing a limited approval and limited disapproval of revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on January 10, 2001 and concerns volatile organic compound (VOC) emissions from soil decontamination operations. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approve a local rule that regulates these emission sources and directs California to correct rule deficiencies.

**EFFECTIVE DATE:** This rule is effective on June 21, 2001.

**ADDRESSES:** You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Ventura County APCD, 669 County Square Dr., 2nd Fl., Ventura, CA 93003-5417

**FOR FURTHER INFORMATION CONTACT:** Ed Addison, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1160.

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

**I. Proposed Action**

On January 10, 2001, 66 FR 1927, EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
VCAPCD .....	74.29	Soil Decontamination Operations .....	10/10/95	03/26/96

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. These provisions include the following:

(Section C.4) This section provides for case-by-case exemptions by the Director from the 0.08 lb/hr allowable emission rate for vapor extraction or bioremediation, if the operator can demonstrate compliance with VCAPCD Rule 51, Nuisance. This exemption is deficient because it does not specify replicable criteria for an exemption nor require equivalent emissions reduction for an exempted source.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

**II. Public Comments and EPA Responses**

EPA provided for a 30-day public comment period on January 10, 2001 in 66 FR 1927. EPA received the following verbal comments on the proposed rulemaking during the comment period from Bernard Bigham of the Chesapeake Environmental Group.

*Comment 1:* VCAPCD 74.29 does little to reduce VOC emissions. Under the exemption in paragraph (C)(3)(f), it is estimated that 200,000 tons/year of contaminated soil is excavated and trucked to landfills, and VOCs volatilize during transport and when soil is used as landfill daily cover. There is currently no rule other than VCAPCD 74.17 that controls VOC loss in contaminated soil transport to landfills. VCAPCD should remove paragraph (C)(3)(f), or Rule 74.17 should be revised to establish soil handling procedures and specify test methods that

adequately evaluate and control VOC loading of landfills. The commenter points, for example, to Bay Area Air Quality Management District Rule 8-40.

*Response:* We discussed this comment with VCAPCD staff, who explained that Alternate Daily Cover (ADC) soil is only exempt under (C)(3)(f) if it meets the test in Definition (G)(2), which states limits by weight ppm VOC as referenced in (F)(2) test methods. We agree that this does establish some control on emissions from ADC, but recommend that the rule be clarified by stating these requirements in paragraph (B) or (C)(3)(f), and by clearly referencing the appropriate test methods in this requirement.

We also recommend that the rule be revised to reference the other District protocols for safe handling and transport of contaminated soil to safe disposal.

*Comment 2:* Paragraph (F)(2) appropriately references Methods 8015B and 5035, but 74.29(F)(5) undermines (F)(2) by referencing (B)(1)(a), which specifies Method 21. Method 25D should be referenced in (B)(1)(a) instead in light of crust formation on piled soil.

*Response:* The District believes Definition (G)(2), Alternate Daily Cover, calls for the measurement of weight ppm VOC content of crusted soils, which requires the use of Method 25D for determining VOCs beneath the surface of excavated soil.

EPA concurs that an appropriate method is being required, but recommends for clarity that testing for weight ppm VOC, by methods in paragraph (F)(2), be a requirement for the "Alternate Daily Cover" exemption allowed in paragraph (C)(3)(f).

### III. EPA Action

EPA has made several additional rule recommendations based on the submitted comments. No comments were submitted, however, that change our overall assessment of the rule or modify our action on the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. Note that the submitted rule has been adopted by the VCAPCD, and EPA's final limited disapproval does not prevent the local agency from enforcing them.

### IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will 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), because it merely approves 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 rule also is not subject to Executive Order 13045 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 23, 2001. 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, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compound.

Dated: April 27, 2001.

**Mike Schulz,**

*Acting Regional Administrator, Region IX.*

Part 52, 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 *et seq.*

### Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(230)(i)(A)(3) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*  
(c) \* \* \*  
(230) \* \* \*

(i) \* \* \*

(A) \* \* \*

(3) Rule 74.29, adopted on October 10, 1995.

\* \* \* \* \*

[FR Doc. 01-12716 Filed 5-21-01; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[MD112-3066a; FRL-6979-3]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOC Emissions from Distilled Spirits Facilities****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on revisions to the Maryland State Implementation Plan (SIP). These revisions establish reasonable available control technology (RACT) to limit volatile organic compound (VOC) emissions from distilled spirits facilities. EPA is fully approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on July 23, 2001 without further notice, unless EPA receives adverse written comment by June 21, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

**SUPPLEMENTARY INFORMATION:****I. Background**

On November 13, 2000, the State of Maryland submitted formal revisions to its State Implementation Plan (SIP). These SIP revisions, submitted by the Maryland Department of the Environment (MDE), consist of the control of volatile organic compound (VOC) emissions from distilled spirits facilities.

**II. Summary of SIP Revision**

COMAR 26.11.19.29 applies to a person who owns or operates a distilled spirits facility that has a total potential to emit VOCs of 25 tons or more per year.

*General Provisions*

This section establishes definitions for the terms "aging warehouse," "bottling operation," "distilled spirits," "distilled spirits facility," and "vacuum filling system."

*General Requirements*

This section requires the use of one of the following control methods at distilled spirits facilities subject to this regulation:

- Empty and fill barrels using a pump-operated, bayonet-type suction and filling device, or comparably effective device that minimizes VOC evaporative losses when emptying or filling barrels,
- Drain distilled spirits from filter plates that are located between the barrel unloading and storage tanks to either a recycling tank or to an enclosed collection system, and
- Use a gravity and vacuum or pressure filling system or comparably effective system to minimize fugitive emissions from the bottling operations.

This section also requires during the warmer weather, used barrels that are stored in the outdoors awaiting disposal shall be periodically (at least weekly) wetted down to reduce potential leakage and fugitive emissions.

*Control of Other Fugitive Emission Sources*

This section requires a submittal to MDE for approval, a good operating practices manual to minimize fugitive VOC emissions from the aging warehouse, and shall be implemented not later than 60 days after approval by MDE. This section also requires a report to be submitted to MDE following implementation of the approved good operating practices.

*Evaluation:* This SIP revision, controlling VOC emissions from distilled spirits facilities, will result in significant enforceable VOC emission reductions. EPA has determined that

COMAR 26.11.19.29 is approvable as a SIP revision.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 23, 2001 without further notice unless EPA receives adverse comment by June 21, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments 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.

**II. Final Action**

EPA is approving the SIP revisions submitted by MDE on November 13, 2000 to control VOC emissions from distilled spirits facilities.

**III. Administrative Requirements***A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 rule also does 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), nor will it have substantial direct effects on the States, on the relationship between