ATTORNEY GENERAL’S JANUARY 12, 1997
opinion states that the quoted language renders this statute inapplicable to
enforcement of any federally authorized programs, since “no immunity could be
afforded from administrative, civil, or criminal penalties because granting
such immunity would not be consistent with federal law, which is one of the
criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity
statutes will not preclude the Commonwealth from enforcing its
operating permit program consistent with the federal requirements. In any
event, because EPA has also determined that a state audit privilege and
immunity law can affect only state enforcement and cannot have any
impact on federal enforcement authorities, EPA may at any time invoke
its authority under the Clean Air Act, including, for example, sections 113,
167, 205, 211 or 213, to enforce the requirements or prohibitions of the state
plan, independently of any state enforcement effort. In addition, citizen
enforcement under section 304 of the Clean Air Act is likewise unaffected by
this, or any, state audit privilege or immunity law.

What Action Is Being Taken By EPA?

The operating permit program revisions submitted by Virginia on
November 20, 2000 improve the currently approved program and meet
the minimum requirements of 40 CFR part 70 and the Clean Air Act.
Therefore, EPA is proposing to approve revisions to the Commonwealth of
Virginia’s title V operating permit program.

The EPA is soliciting public comments on the issues discussed in
this document. These comments will be considered before taking final action.
Interested parties may participate in the Federal rulemaking procedure by
submitting written comments to the EPA Regional office listed in the
ADDRESSES section of this document.

Administrative Requirements

Under Executive Order 12866 (58 FR
51735, October 4, 1993), this proposed action is not a “significant regulatory
action” and therefore is not subject to review by the Office of Management and
Budget. This action merely proposes to approve State law as meeting federal
requirements and imposes no additional requirements beyond those imposed by
State law. Accordingly, the Administrator certifies that this proposed 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 proposes to
approve 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 proposed 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 proposed
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 proposes to approve 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 proposed rule also is not
subject to Executive Order 13045 (62 FR
19085, April 23, 1997), because it is not
economically significant.

In reviewing State operating permit program 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 State operating permit
program submission for failure to use
VCS. It would thus be inconsistent with
applicable law for EPA, when it reviews
a State operating permit program
submission, to use VCS in place of a
State operating permit program
submission that otherwise satisfies the
provisions of the Clean Air Act. Thus,
the requirements of section (j) of the
National Technology Transfer and
272 note) do not apply. As required by
section 3 of Executive Order 12988 (61
FR 4729, February 7, 1996), in issuing
this proposed rule, EPA has taken the
necessary steps to eliminate drafting
erors 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 proposed rule to approve
revisions to Virginia’s operating permit
program does not impose an
information collection burden under
the provisions of the Paperwork Reduction
Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 40 CFR Part 70
Administrative practice and
procedure, Air pollution control,
Environmental protection,
Intergovernmental relations, Operating
permits, Reporting and recordkeeping
requirements.

Authority: 42 U.S.C. 7401 et seq.
Donald S. Welsh,
Regional Administrator, Region III.
[FR Doc. 01–24714 Filed 10–2–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70
[DE–T5–2001–01b; FRL–7072–8]

Clean Air Act Full Approval of
Operating Permit Program; Delaware
AGENCY: Environmental Protection
Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to fully
approve the operating permit program of
the State of Delaware. Delaware’s
operating permit program was
submitted in response to the Clean Air
Act (CAA) Amendments of 1990 that
required States to develop, and submit
to EPA, programs for issuing operating
permits to all major stationary sources
and to certain other sources within the
States’ jurisdiction. The EPA granted
final interim approval of Delaware’s
operating permit program on December
4, 1995. Delaware amended its operating
permit program to address deficiencies
identified in the interim approval action
and this action proposes to approve
those amendments. In the Final Rules
section of this Federal Register, EPA is
approving the State’s operating permit
program as a direct final rule without
prior proposal because the Agency
views this as a noncontroversial
submittal 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 action, no
further activity is contemplated. 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. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by November 2, 2001.

ADDRESSES: Written comments should be mailed to Ms. Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, 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 and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: David Campbell, (215) 814–2196, or by e-mail at campbell.dave@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the “Rules and Regulations” section of this Federal Register publication.


Donald S. Welsh,
Regional Administrator, Region III.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRN–7066–1]

RIN: 2050–AE07

Correction to Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture Rule; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing two clarifying revisions to the mixture rule. The first revision reinserts certain exemptions to the mixture rule which were inadvertently deleted. The second revision clarifies that mixtures consisting of certain excluded wastes (commonly referred to as Bevill wastes) and listed hazardous wastes that have been listed solely for the characteristic of ignitability, corrosivity, and/or reactivity, are exempt once the characteristic for which the hazardous waste was listed has been removed.

In the “Rules and Regulations” section of today’s Federal Register, we are also simultaneously approving these clarifying revisions to the mixture rule as a direct final rule without prior proposal because we view these as noncontroversial submittal and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by November 2, 2001.

ADDRESSES: Please send an original and two copies of your comments referencing Docket number F–2001–