

determinations, in the form of operating permits:

(B) Operating permit (OP):  
 (1) Tennessee Gas Pipeline Company, Station 321, Susquehanna County, OP-58-0001A, effective date April 16, 1999.

(2) Tennessee Gas Pipeline Company, Station 219, Mercer County, OP-43-0272, effective date April 7, 1998.

(ii) Additional Material—Additional materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(218)(i) of this section.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA284-0462; FRL-7811-2]

**Revisions to the California State Implementation Plan, Bay Area Air Quality Management District**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of revisions to the Bay Area Air Quality Management District portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on October 20, 2003 and concern volatile organic compound (VOC) emissions from solvents and surface cleaning operations when coating large appliances, metal furniture, and miscellaneous metal parts. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on November 26, 2004.

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

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

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B-102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460

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

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbltx.htm>. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Jerald S. Wamsley, EPA Region IX, at (415) 947-4111, or via email at [wamsley.jerry@epa.gov](mailto:wamsley.jerry@epa.gov).

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

**I. Proposed Action**

On October 30, 2003 (68 FR 61782), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule #	Rule title	Adopted	Submitted
BAAQMD .....	8-14	Surface Preparation and Coating of Large Appliances and Metal Furniture.	10/16/02	04/01/03
BAAQMD .....	8-19	Surface Preparation and Coating of Miscellaneous Metal Parts and Products.	10/16/02	04/01/03

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 comments from the following parties.

1. Adrienne Bloch, Communities for a Better Environment (CBE); letter and electronic mail dated November 21, 2003.

2. Marc Chytilo, Transportation Solutions Defense and Education Fund (TRANSDEF); co-signee same letter referenced above. The comments and our responses are summarized below.

*Comment:* EPA should disapprove or defer action on BAAQMD Rules 8-14 and 8-19 because on July 23, 2003 a State Court ruled that the BAAQMD did not follow mandated state law in adopting the 2001 SIP stationary source control measure SS-13 (Rules 8-14 and

8-19 in a different form). The State Court found that the BAAQMD's initial study and negative declarations under the California Environmental Quality Act (CEQA) for the 2001 Ozone Attainment Plan (OAP), including SS-13, were inadequate. Given that the BAAQMD has not met CEQA's substantive and procedural requirements, the commenters assert that the BAAQMD has neither legal authority to adopt Rules 8-14 and 8-19, nor sufficient procedural evidence that they have followed State law in adopting and submitting Rules 8-14 and 8-19. Consequently, EPA should reject the rule revisions concerning Rules 8-14 and 8-19 because they violate the Clean Air Act (CAA) at Section 110(a)(2)(E) and EPA regulations at 40 Code of Federal Regulations (CFR), Part 51, Appendix V.

The CAA Section 110(a)(2)(E) does not allow EPA to approve a SIP revision unless the State can assure that it has authority under state and local law to carry out the SIP revision. CFR 40 Part 51, Appendix V requires that a State provide evidence of legal authority to

adopt a SIP revision and show that the State followed all of its procedural requirements.

*EPA Response:* In subsequent actions, BAAQMD and the commenters, CBE and TRANSDEF, appealed the July 23, 2003 State Court decision. In April 2004, BAAQMD, CBE, and TRANSDEF entered into a settlement agreement that vacated the July 23, 2003 State Court judgement. As a part of the settlement, CBE and TRANSDEF agreed to dismiss their lawsuit against BAAQMD that challenged the 2001 OAP on CEQA and other grounds and relinquish all claims associated with the lawsuit. Consequently, we are left with no substantive basis requiring that we adjudicate CBE and TRANSDEF's claim that we should not act on Rules 8-14 and 8-19 as submitted.

However, it should be noted that as part of BAAQMD's September 2002 adoption action on Rules 8-14 and 8-19, the district published its "Initial Study/Negative Declaration for Amendments to the BAAQMD Regulation 8, Rules 4, 14, 19, 31, and 43 (Surface Coating Rules.)" This

document provided the basis for the BAAQMD Board's negative declaration within the district's resolution of adoption and for satisfying its CEQA obligations. In turn, this negative declaration and other submittal documents provided the basis for EPA's May 13, 2003 completeness finding on Rules 8-14 and 8-19.

**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 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. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). 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 (Pub. L. 104-4).

This rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does 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). This action 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 "Protection of Children from Environmental Health Risks and Safety Risks" (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. 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. section 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. section 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 December 27, 2004. 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 6, 2004.

**Laura Yoshii,**

*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 paragraph (c)(315)(i)(A)(3) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*  
 (c) \* \* \*  
 (315) \* \* \*  
 (i) \* \* \*  
 (A) \* \* \*

(3) Rule 8-14, adopted on March 7, 1979 and amended on October 16, 2002; and Rule 8-19, adopted on January 9, 1980 and amended on October 16, 2002.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[MD170-3113a; FRL-7819-7]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOC Emissions from Yeast Manufacturing**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The SIP revisions pertain to the amendments of a regulation that control volatile organic compound (VOC) emissions from yeast manufacturing facilities. EPA is approving these revisions in accordance with the