

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 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.*).

*B. Submission to Congress and the Comptroller General*

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for NSWCCD-SSES.

*C. Petitions for Judicial Review*

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 June 28, 2005. Filing a petition for reconsideration by the Administrator of this final rule approving source-specific RACT requirements for NSWCCD-SSES in the Commonwealth of Pennsylvania 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: April 20, 2005.

**Donald S. Welsh,**  
*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 NN—Pennsylvania**

■ 2. In § 52.2020, the table in paragraph (d)(1) is amended by adding the entry for Naval Surface Warfare Center, Caderock Division Ship Systems Engineering Station at the end of the table to read as follows:

<b>§ 52.2020</b>	<b>Identification of plan.</b>
* * *	
(d) * * *	
(1) * * *	

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
* * * * *					
Naval Surface Warfare Center, Caderock Division Ship Systems Engineering Station.	PA-04108 .....	Philadelphia .....	10/18/04	4/29/05, [Insert page number where the document begins].	52.2020(d)(1)(j).

\* \* \* \* \*  
[FR Doc. 05-8609 Filed 4-28-05; 8:45 am]  
**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[R05-OAR-2004-WI-0001; FRL-7901-2]

**Approval and Promulgation of Implementation Plan; Wisconsin**

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

**ACTION:** Final rule.

**SUMMARY:** On August 29, 2003, EPA published a final rule approving the emission averaging program for existing sources subject to the state's rule limiting oxides of nitrogen (NO<sub>x</sub>) emissions in southeast Wisconsin. On November 10, 2004 (69 FR 65069), EPA published a direct final rule approving a revision to the state rule that modifies language to clarify which sources are eligible to participate in the NO<sub>x</sub> emission averaging program. In addition, the revision creates a separate categorical emission limit for new combustion turbines burning biologically derived gaseous fuels. On November 10, 2004 (69 FR 65117), EPA

also published a proposed rule on this revision. The direct final rule stated that if EPA received an adverse comment, EPA would withdraw the direct final rule and address all public comments received in a subsequent final rule based on the proposed rule. EPA received an adverse comment and withdrew the direct final rule on January 10, 2005 (70 FR 1663). This rule responds to the comment received and announces EPA's final action.

**DATES:** This final rule is effective on May 31, 2005.

**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID

No. R05-OAR-2004-WI-0001. All documents in the docket are listed in the RME index at <http://docket.epa.gov/rmepub/>, once in the system, select "quick search," then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886-6031 before visiting the Region 5 office. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6031. [hatten.charles@epa.gov](mailto:hatten.charles@epa.gov).

**SUPPLEMENTARY INFORMATION:**

- I. General Information
  - A. Does This Action Apply to Me?
  - B. How Can I Get Copies of This Document and Other Related Information?
- II. Public Comment Received and EPA Response
- III. What Action Is EPA Taking Today?
- IV. Why Is the Request Approvable?
- V. Statutory and Executive Order Review

**I. General Information**

*A. Does This Action Apply to Me?*

This action revises two parts of the Wisconsin state implementation plan (SIP) for the control of NO<sub>x</sub> emissions from stationary sources as required by state rule NR 428. The rule applies to existing sources in eight counties in the Milwaukee-Racine and Sheboygan ozone nonattainment areas (Kenosha, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha counties), and to new sources in six of the eight counties (Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha).

One revision modifies language to clarify which units are eligible for demonstrating compliance through emissions averaging. The emissions averaging provisions apply only to existing electric utility boilers in the

Milwaukee-Racine and Sheboygan ozone nonattainment areas (Kenosha, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha counties). The second revision creates a new NO<sub>x</sub> categorical limit for newly installed combustion turbines burning biologically derived gaseous fuel. Sources affected by the new categorical NO<sub>x</sub> limit are landfill operations, wastewater treatment plants, and digester facilities specifically designed to generate gaseous fuel. The new NO<sub>x</sub> categorical limit for newly installed combustion turbines burning biologically derived fuel applies only to new sources located in Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties in southeastern Wisconsin. The revisions have been adopted into the state administrative code and became effective on January 1, 2004.

*B. How Can I Get Copies of This Document and Other Related Information?*

1. The Regional Office has established an official public rulemaking file for this action that is available both electronically and in hard copy form at the Regional office. The electronic public rulemaking file can be found under RME ID No. R05-OAR-2004-WI-0001. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include CBI or other information whose disclosure is restricted by statute. The hard copy version of the official public rulemaking file is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

**II. Public Comment Received and EPA Response**

*Comment:* Since everyone knows that gasoline mileage figures are taken under perfect circumstances and do not affect the "real world" of motoring, why doesn't the figure reflect worst-case conditions, *i.e.* with air conditioning on and rapid acceleration considered? These conditions occur all the time. Then we will be able to judge the auto's mileage fairly and not fairy tale figures

from EPA. Protect the environment, don't deceive it.

*EPA Response:* This comment is not relevant to this action, since this action pertains to controls on industrial facilities and not automobiles.

**III. What Action Is EPA Taking Today?**

EPA is approving, as part of the Wisconsin ozone SIP, certain sections of Wisconsin rule NR 428, Control of Nitrogen Oxide Emissions. These revisions refer to the addition of language to clarify which sources are eligible to participate in the emissions averaging program.

In addition, EPA is approving language that creates a separate categorical emission limit for new combustion turbines which burn biologically derived gaseous fuel.

*Clarification of Emissions Averaging Eligible Sources*

The current version of NR 428 contained in the SIP allows utilities to demonstrate compliance with NO<sub>x</sub> emission limitations by averaging emissions over multiple units. The rule defines eligible units through the combination of two provisions. NR 428.06(2)(a), the introduction to the averaging program, specifies that a unit must be subject to emission limitations for existing units under NR 428.03. NR 428.06(2)(e)(3) specifies that, to be eligible for the averaging program, a unit must be allotted a portion of the total 15,912 tons of NO<sub>x</sub> emissions allocated by the department based on fuel consumption for 1995 through 1997. This mass of NO<sub>x</sub> emissions is the quantity determined by the Wisconsin Department of Natural Resources (DNR) for electric utility units with emission limitations under NR 428.03 and which have operated in the ozone nonattainment area during the 1995 to 1997 time frame. Through these two provisions the affected sources are defined as 17 units at five facilities in the nonattainment area, owned by We-Energies, Alliant Energy, and the Wisconsin Public Service.

Section NR 428.06(2)(a) is amended to specify that an eligible unit must be subject to the emission limitations for utility boilers under NR 428.03(a). The amendment eliminates the need to reference two provisions in determining eligible sources.

Eligible sources must still receive a proportion of the total 15,912 tons of NO<sub>x</sub> emissions as stated under NR 428.06(2)(e)(3). This revision does not change the population of the sources currently eligible under the existing SIP.

*Categorical NO<sub>x</sub> Emission Limit for Newly Installed Combustion Turbines Fired With Biologically Derived Gaseous Fuel*

In this SIP revision, EPA is also approving a new categorical NO<sub>x</sub> emission limit for newly installed combustion turbines which burn biologically derived gaseous fuel. This section of the rule applies to new sources installed after February 1, 2001, located in Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties in southeastern Wisconsin.

The Wisconsin DNR created this new categorical NO<sub>x</sub> emission limit because sources looking to install new combustion turbines would not be able to comply with the limit for natural gas-fired units that would otherwise apply under the provision of NR 428.04(2)(g)(1)(c). Currently, a newly installed simple cycle combustion turbine with a maximum design output less than 40 megawatts and burning biologically derived gaseous fuel is subject to the SIP emission limitation of 25 parts per million dry volume (ppmdv) of NO<sub>x</sub> at 15 percent oxygen under NR 428.04(2)(g)(1)(c), which was established for burning any type of "gaseous fuel." In the development of NR 428, the Wisconsin DNR anticipated biologically derived gaseous fuels being combusted in reciprocating engines and not in a combustion turbine. Therefore, biologically derived gaseous fuels were not addressed in establishing the combustion turbine emission limit of 25 ppmdv of NO<sub>x</sub> at 15 percent oxygen. Instead, the emission limit was established based solely on the combustion of fossil gaseous fuels such as natural gas or propane.

The Wisconsin DNR has determined that a separate categorical standard of 35 ppmdv at 15 percent oxygen is appropriate for a combustion turbine burning landfill gas or any other biologically derived fuel. Comparable alternatives for controlling emissions from sources that generate biologically derived gaseous fuel, as currently allowed under the SIP, are likely to result in greater NO<sub>x</sub> emissions than the combustion turbine. Landfills and wastewater digester plants generate biologically derived gaseous fuel as a by-product. Instead of destroying the gas by flaring, these facilities prefer to generate electricity to drive their pumping and gas collection systems. The units capable of burning the biologically derived gaseous fuel and generating electricity are either a combustion turbine or spark ignition reciprocating engine. However, the

actual NO<sub>x</sub> emission rate of the reciprocating engine is significantly higher than the new categorical limit of the combustion turbine.

The use of a combustion turbine's higher energy efficiency and lower overall emissions potentially results in further environmental benefit. First, the turbine generates energy more efficiently than a reciprocating engine or power boiler burning biologically derived fuel. Second, the additional generated electricity for the same unit of fuel can potentially offset emissions from traditional electricity sources, such as coal-fired utility plants.

Therefore, the Wisconsin DNR has concluded that implementation of a separate categorical limit is necessary for the continued or increased use of combustion turbines firing biologically derived gaseous fuel. In addition, this action is likely to result in lower NO<sub>x</sub> emissions than originally allowed in the ozone attainment demonstration submitted to EPA in December 2000. See 66 FR 56931, November 13, 2001. The new categorical NO<sub>x</sub> limit is expressed for both a simple cycle and combined cycle combustion turbine configuration.

The limit is placed in the section of NO<sub>x</sub> emission limits for combustion turbines under provision NR 428.04(2)(g)4 as follows:

NR 428.04(2)(g)4. "Units fired by a biologically derived gaseous fuel." No person may cause, allow or permit nitrogen oxides to be emitted from a biologically derived gaseous fuel fired combustion turbine in amounts greater than those specified in this subdivision.

a. 35 parts per million dry volume (ppmdv), corrected to 15% oxygen, on a 30-day rolling average basis for a simple cycle combustion turbine.

b. 35 parts per million dry volume (ppmdv), corrected to 15% oxygen, on a 30-day rolling average basis for a combined cycle combustion turbine.

With the creation of the new categorical emission limit, this revision amends the introductory language under provision NR 428.04(2)(g)(1), to acknowledge that combustion turbines only burning biologically derived gaseous fuel are not subject to the more stringent general emission limitations for burning any type of "gaseous fuels". The amended language references the newly created subparagraph 4 and reads:

NR 428.04(2)(g)1.(intro.) "Gaseous fuel-fired units." Except as provided in subs. 3. and 4., no person may cause, allow or permit nitrogen oxides to be emitted from a gaseous fuel-fired combustion turbine in amounts greater than those specified in this subdivision.

Biologically derived gaseous fuel is defined under the newly created provision NR 428.02(1). The current provision of NR 428.02(1) is renumbered to NR 428.02(2). The newly created definition is as follows:

NR 428.02(1) "Biologically derived gaseous fuel" means a gaseous fuel resulting from biological processing of a carbon-based feedstock.

Units subject to the new categorical limit for combustion turbines burning biologically derived gaseous fuel must meet the same compliance, monitoring, and reporting requirements established for all other new sources. These requirements have already been determined appropriate for combustion turbines and approved by EPA in the Wisconsin SIP.

EPA's review of the revisions to Wisconsin's SIP regarding the control of NO<sub>x</sub> emissions is contained in a September 9, 2004, technical support document available from EPA Region 5, according to previously described procedures in Section I of this notice.

#### IV. Why Is the Request Approvable?

EPA has concluded that the modification to Wisconsin's NO<sub>x</sub> SIP to clarify those units eligible for demonstrating compliance through emission averaging does not change the population of sources currently eligible under the existing SIP. The approval of the new categorical NO<sub>x</sub> emission limit will have no negative impact on the Wisconsin one-hour ozone attainment demonstration SIP. The new categorical standard will not result in any increase in overall NO<sub>x</sub> emissions. To the contrary, this action is anticipated to reduce NO<sub>x</sub> emission levels on a source-by-source basis below those allowed by the December 2000 SIP. The comparable alternative for burning biologically derived fuel is a spark ignition reciprocating engine with a higher NO<sub>x</sub> emission rate than the new categorical standard for combustion turbines. In addition, there is a general environmental benefit due to the use of combustion turbines, in most cases, generating energy (electricity and steam) more efficiently than reciprocating engines or power boilers.

#### V. Statutory and Executive Order Review

##### *Executive Order 12866: Regulatory Planning and Review*

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.

*Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

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).

*Regulatory Flexibility Act*

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.*).

*Unfunded Mandates Reform Act*

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).

*Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

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).

*Executive Order 13132: Federalism*

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.

*Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

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.

*National Technology Transfer Advancement Act*

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.

*Paperwork Reduction Act*

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.*).

*Congressional Review Act*

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 May 31, 2005. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 28, 2005.

**Norman Niedergang,**

*Acting Regional Administrator, Region 5.*

■ 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 YY—Wisconsin**

■ 2. Section 52.2570 is amended by adding paragraph (c)(111) to read as follows:

**§ 52.2570 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(111) On May 25, 2004, Lloyd L. Eagan, Director, Wisconsin Department of Natural Resources, submitted a revision to its rule for control of nitrogen oxide (NO<sub>x</sub>) emissions as a revision to the Wisconsin State Implementation Plan. The revision modifies language to clarify which sources are eligible to participate in the NO<sub>x</sub> emission averaging program to demonstrate compliance as part of the one-hour ozone attainment plan approved by EPA for the Milwaukee-Racine and Sheboygan ozone nonattainment areas (Kenosha, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha counties). The rule revision also creates a separate limit for new combustion turbines burning biologically derived gaseous fuels. The new NO<sub>x</sub> categorical limit for newly installed combustion turbines burning biologically derived fuel applies only to new sources located in Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties in southeastern Wisconsin.

(i) Incorporation by reference.

Wisconsin rules NR 428.02(1) and (1m); NR 428.04(2)(g)(1); NR 428.04(2)(g)(4); and NR 428.06(2)(a) as published in the (Wisconsin) Register,

December 2003, No.576 and effective January 1, 2004.

[FR Doc. 05-8598 Filed 4-28-05; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R03-OAR-2005-VA-0003; FRL-7905-9]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Minor Revisions to the Fugitive Dust and Waiver Requirements

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Virginia State Implementation Plan (SIP). The revision removes oil application as an acceptable alternative fugitive dust emissions reduction method, due to an existing prohibition of oil application, on land, found in the Virginia statute. In addition, the revision changes a specific reference from "Executive Director" to "Director." EPA is approving these minor revisions to Virginia's regulations in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on June 28, 2005 without further notice, unless EPA receives adverse written comment by May 31, 2005. 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:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2005-VA-0003 by one of the following methods:

A. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. Agency Web site: <http://www.docket.epa.gov/rmepub/> RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov).

D. Mail: R03-OAR-2005-VA-0003, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such

deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to RME ID No. R03-OAR-2005-VA-0003. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://www.regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://www.regulations.gov) websites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Linda Miller, (215) 814-2068, or by e-mail at [miller.linda@epa.gov](mailto:miller.linda@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On February 2, 2004, the Virginia Department of Environmental Quality submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of minor modifications to Virginia's fugitive dust and waiver regulations. These minor revisions remove language that conflicts with the Virginia statute and clarifies who may grant a waiver.

##### II. Summary of SIP Revision

The SIP revision, submitted on February 2, 2004, includes regulatory modifications made to alleviate a conflict between statutory provisions and regulatory requirements. The Virginia statute (Code of Virginia, Section 62.1-44.34:18) prohibits the discharge of oil upon land. The previously SIP approved Virginia regulations concerning fugitive dust/emissions conflicted with the statutory prohibition. The revisions to 9 VAC 5-40-90 and 9 VAC 5-50-90 remove the reference to application of oil as a means to reduce fugitive dust emissions. The change does not affect the stringency of the SIP as there are several other alternatives to reduce fugitive emissions.

In addition, there are several other minor editorial corrections made to 9 VAC 5-40-120 and 9 VAC 5-50-120. The reference to "Executive Director" is changed to "Director," and the word "methods" is removed from several provisions in the regulation. These minor editorial changes do not alter the interpretation of the SIP approved regulations.

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed.

Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental