

available control technology (RACT). EPA has established source categories for which RACT must be implemented. If no major sources of volatile organic compound (VOC) emissions in a particular source category exist in a nonattainment area, a State may submit a negative declaration for that category. Texas submitted a State Implementation Plan (SIP) revision which included negative declarations for certain source categories in the El Paso 1-hour ozone standard nonattainment area. EPA previously approved the State's declaration that no major sources existed for 9 source categories in the El Paso area. In the approval EPA neglected to approve the negative declaration for the synthetic organic chemical manufacturing industry (SOCMI) batch processing category in the El Paso area. EPA is proposing to approve this negative declaration for the El Paso 1-hour ozone standard nonattainment area.

**DATES:** Written comments must be received by July 9, 2007.

**ADDRESSES:** Comments may be mailed to Mr. Carl Young, Acting Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Riley, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-8542; fax number 214-665-7263; e-mail address [riley.jeffrey@epa.gov](mailto:riley.jeffrey@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. 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 the 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.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: May 21, 2007.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2007-0200; FRL-8323-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Amendments to the Open Burning Regulation

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This SIP revision pertains to the amendments of Virginia's open burning regulation. This action is being taken under the Clean Air Act (CAA or the Act).

**DATES:** Written comments must be received on or before July 9, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2007-0200 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail:* [miller.linda@epa.gov](mailto:miller.linda@epa.gov).

C. *Mail:* EPA-R03-OAR-2007-0200, Linda Miller, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *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 Docket ID No. EPA-R03-OAR-2007-0200. EPA's policy is that all comments received will be included in the public docket without change, and may be

made available online at [www.regulations.gov](http://www.regulations.gov), 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 [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is 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 [www.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 [www.regulations.gov](http://www.regulations.gov) index. 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 [www.regulations.gov](http://www.regulations.gov) 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:** Rose Quinto, (215) 814-2182, or by e-mail at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On February 5, 2007, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to its State Implementation Plan (SIP) for Open Burning Regulation. The SIP

revision consists of regulation amendments to the April 26, 1996 submittal. The SIP revision expands the geographic applicability of the control measure to implement the open burning seasonal restrictions as part of its plans to reduce and maintain volatile organic compound (VOC) emissions in VOC emissions control areas in Virginia. The amendments include: 9 VAC 5-40-5600—Applicability; 9 VAC 5-40-5610—Definitions; 9 VAC 5-40-5620—Open Burning Prohibitions; and 9 VAC 5-40-5630—Permissible Open Burning.

## II. Summary of SIP Revision

Virginia's Open Burning Regulation (9 VAC 5 Chapter 40) applies to any person who permits or engages in open burning or who permits or engages in burning using special incineration devices.

A special incineration device is a pit incinerator, conical or teepee burner, or any other device specifically designed to provide combustion performance. Modifications of 9 VAC 5 Chapter 40 are made to ensure that the regulation is consistent with the existing incinerator regulations of the board and waste management regulations.

The provisions of this amended regulation are applicable only in the volatile organic emission control areas identified in 9 VAC 5-20-206 of the Virginia Regulations during the months of May, June, July, August and September. The volatile organic emission control areas applicable to this regulation include:

1. Western Virginia Emissions Control Area: Botetourt County, Frederick County, Roanoke County, Salem County and Winchester County.

2. Northern Virginia Emissions Control Area: Arlington County, Fairfax County, Loudon County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City and Manassas Park City.

3. Hampton Roads Emissions Control Area: James City County, York County, Chesapeake City, Hampton City, Newport News City, Norfolk City, Poquoson City, Portsmouth City, Suffolk County, Virginia Beach City and Williamsburg City.

4. Richmond Emissions Control Area: Charles City County, Chesterfield County, Hanover County, Henrico County, Colonial Heights City, Hopewell City and Richmond City.

5. Fredericksburg Emissions Control Area: Spotsylvania County and Fredericksburg City.

Definitions included in this SIP revision are: Air curtain incinerator, clean burning waste, clean lumber, clean wood, commercial waste,

construction waste, debris waste, demolition waste, garbage, hazardous waste, household waste, industrial waste, landfill, local landfill, open burning, open pit incinerator, refuse, salvage operation, sanitary landfill, special incineration device, wood waste, and yard waste.

This SIP revision provides for the control of open burning and use of special incineration devices for destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities. This SIP revision also provides for the control of open burning and use of special incineration device for the destruction of hazardous waste or containers for such materials. In addition, this SIP revision provides for the control of open burning and use of special incineration device for the purpose of salvage operation or for the destruction of commercial/industrial waste.

Open burning or the use of special incineration devices is permitted on-site for the destruction of clean burning waste and debris waste resulting from property maintenance, from the development or maintenance of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations. Such destruction is prohibited in the VOC emissions control areas (see 9 VAC 5-20-206) during May, June, July, August and September.

Open burning or the use of special incineration devices is also permitted for the destruction of clean burning waste and debris waste on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas. Such destruction is prohibited in the VOC emissions control areas (see 9 VAC 5-20-206) during May, June, July, August and September.

## III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

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 Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. \* \* \*" The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 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 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.

#### IV. Proposed Action

In implementing the open burning restrictions, this amended regulation (9 VAC 5 Chapter 40) will reduce and maintain VOC emissions in the volatile organic emission control areas identified in 9 VAC 5–20–206 of the Virginia regulations. EPA is proposing to approve the Virginia SIP revision for the Open Burning Regulation submitted on February 5, 2007. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### V. Statutory and Executive Order Reviews

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. 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 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 (Pub. L. 104–4). This proposed 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 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 requirement, 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 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

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 proposed 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 proposed rule pertaining to the amendments of Virginia's Open

Burning Regulation, 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 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: May 31, 2007.

**William T. Wisniewski,**

*Acting Regional Administrator, Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA–R03–OAR–2007–0245; FRL–8322–8]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Altoona 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan and 2002 Base-Year Inventory

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Altoona ozone nonattainment area (“Altoona Area” or “Area”) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). The Area is comprised of Blair County, Pennsylvania. EPA is proposing to approve the ozone redesignation request for the Altoona Area. In conjunction with its redesignation request, the Commonwealth submitted a SIP revision consisting of a maintenance plan for the Altoona Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is proposing to make a determination that the Altoona Area has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality monitoring data for 2003–2005. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the Altoona Area has met the criteria for redesignation to