

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2005-VA-0011; FRL-8333-8]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Control of Particulate Matter From Pulp and Paper Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to a State Implementation Plan (SIP) submitted by the Commonwealth of Virginia Department of Environmental Quality. The revisions pertain to amendments to an existing regulation to control particulate matter from pulp and paper mills. This action is being taken under the Clean Air Act (CAA or the Act).

DATES: Written comments must be received on or before August 2, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2005-VA-0011 by one of the following methods:

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

B. *E-mail*: cripps.christopher@epa.gov

C. Mail: EPA-R03-OAR-2005-VA-0011, Christopher Cripps, Acting Chief, Air Quality and 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-2005-VA-0011. 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*, 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* or e-mail. The *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*, 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* 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* 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: LaKeshia N. Robertson, (215) 814-2113, or by e-mail at robertson.lakeshia@epa.gov.

SUPPLEMENTARY INFORMATION: On June 21, 2005, the Commonwealth of Virginia submitted revisions to its State Implementation Plan (SIP) plan for Pulp and Paper mills. The revisions pertain to the control of particulate matter (9 VAC 5, Chapter 40, Article 13, Rule 4-13).

I. Background

The revisions consist of amendments to existing regulations that implement emission standards for particulate matter from pulp and paper mills (9 VAC 5, Chapter 40, Article 13, Rule 4-13.) The changes will control particulate matter emissions.

II. Summary of SIP Revision

The following provisions consist of changes to the Commonwealth of

Virginia's regulation for the control and abatement of air pollution (9 VAC 5, Chapter 40, Article 13, Rule 4-13). The modifications below are the subject of this rulemaking.

Revision 1: 9 VAC 5-40-1660. Applicability and designation of affected facilities. Section A is revised to read as follows: The affected facilities in pulp and paper mills to which the provisions of this article apply are: Each recovery furnace each smelt dissolving tank, each lime kiln, each slaker tank, and each kraft wood pulping operation. For the purpose of this article, a kraft wood pulping operation is comprised only of any combination of the following units: Recovery furnaces, lime kilns, digester systems, multiple-effect evaporator systems, condensate stripper systems and smelt dissolving tanks.

Revision 2: 9 VAC 5-40-1670. Definitions. Section C: The definition of agreement is deleted and the following terms are added: (1) Neutral sulfite semichemical pulping operation means any operation in which pulp is produced from wood by cooking (digesting) wood chips in a solution of sodium sulfite and sodium bicarbonate, followed by mechanical defibrating (grinding); (2) new design recovery furnace means a straight kraft recovery furnace that has both membrane wall or welded wall construction and emission control designed air systems. A new design furnace shall have stated in its contract a TRS performance guarantee or that it was designed with air pollution control as an objective; (3) pulp and paper mill means any kraft pulp mill or any paper mill using a semichemical pulping process; and (4) semichemical pulping process means any pulp manufacturing process in which the active chemicals of the liquor used in cooking (digesting) wood chips to their component parts in a pressurized vessel (digester) are primarily a liquor of sodium hydroxide and sodium carbonate. The major difference between all semichemical techniques and those of kraft and acid sulfite processes is that only portion of the lignin is removed during the cooking (digesting), after which the pulp is further reduced by mechanical disintegration. In addition, these terms were amended: Cross recovery furnace; straight kraft recovery furnace; and total reduced sulfur.

Revision 3: 9 VAC 5-40-1690. Standard for total reduced sulfur. Section A is revised to read as follows: No owner or other person shall cause or permit to be discharged into the atmosphere from any kraft wood pulping operation unit specified below any total reduced sulfur emissions in

excess of the following limits. Section B is deleted and replaced by Section C. In addition, Section D is deleted.

Revision 4: 9 VAC 5-40-1750. Compliance. In Section A, the letter A is deleted and the provision remains the same. Sections B through D are deleted and no longer relevant to the regulation.

Revision 5: 9 VAC 5-40-1770. Monitoring. Section B clarifies that the owner of a kraft pulp mill shall comply with monitoring provisions by October 1, 1990. Section C (1) has been revised to include the language "Part" to reference information used in the regulation.

Revision 6: 9 VAC 5-40-1810. Permits. The paragraph which states the permit requirements shall read as follows: A permit may be required prior to beginning any of the activities specified below if the provisions of 9 VAC 5 Chapter 50 (9 VAC 5-50-10 *et seq.*) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply. Also, under the numeric rationale for permits, an additional activity, which is number "6" is added to read as follows: Operation of a facility.

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

EPA is approving the Commonwealth of Virginia's SIP submitted on June 21, 2005 to control particulate matter emissions. 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 Virginia's control of particulate matter from pulp and paper mills, 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, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: June 22, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7-12838 Filed 7-2-07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and Part 97

[Docket No. EPA-R02-OAR-2007-0233; FRL-8334-9]

Approval and Promulgation of Implementation Plans; New Jersey: Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing action on a revision to New Jersey's State Implementation Plan (SIP) submitted on February 6, 2007. EPA is proposing to fully approve its incorporation into the SIP provided New Jersey's final rule is consistent with the modifications discussed herein.

This revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR) and the CAIR Federal Implementation Plans (CAIR FIPs) concerning sulfur dioxide (SO₂), and annual and ozone season oxides of nitrogen (NO_x) emissions. EPA is not proposing to make any changes to the CAIR FIPs, but is proposing to the extent EPA approves New Jersey's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

On April 28, 2006, EPA promulgated CAIR FIPs for States covered by CAIR as a backstop to implement the requirements of CAIR until States have obtained fully approved SIPs to replace the FIPs. The FIPs require certain electric generating units (EGUs) to participate in the Federal CAIR cap-and-trade programs addressing SO₂, NO_x annual, and NO_x ozone season emissions. The CAIR FIPs also provide that States may submit "abbreviated" SIP revisions to replace or supplement specific elements of the FIPs, leaving the remainder of the overall FIPs in place, rather than submitting full SIP revisions that replace the FIPs.

The New Jersey SIP revision that EPA is proposing to approve is an abbreviated SIP revision that will replace two provisions of the CAIR FIP that allow the State to: (1) Use a methodology chosen by the State for allocation of annual and ozone season NO_x allowances and; (2) use a methodology chosen by the State for allocation of NO_x annual allowances from the NO_x annual Compliance Supplemental Pool (CSP). The revision retires, rather than allocates allowances from the NO_x annual CSP.

The SIP revision that EPA is proposing to approve will also satisfy New Jersey's 110(a)(2)(D)(i) obligations to submit a SIP revision that contains adequate provisions to prohibit air emissions from adversely affecting another State's air quality through interstate transport.

The intent of this proposed revision is to approve a State specific CAIR program which will result in emission reductions necessary to prevent the interstate transport of air pollutants. The revision also shows that the interstate transport of pollutants from the State has been adequately addressed in the applicable implementation plan.

DATES: Comments must be received on or before August 2, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R02-OAR-2007-0233, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* Werner.Raymond@epa.gov.

3. *Fax:* (212) 637-3901.

4. *Mail:* Docket ID No. EPA-R02-OAR-2007-0233, Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

5. *Hand Delivery or Courier:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business is Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R02-OAR-2007-0233. 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, 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 through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The 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