

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 52

[EPA-R03-OAR-2009-0520; FRL-8953-1]

**Approval and Promulgation of Air
Quality Implementation Plans; Virginia;
Opacity Variance for Rocket Testing
Operations Atlantic Research
Corporation's Orange County Facility**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Virginia State Implementation Plan (SIP). The revisions pertain to the addition of 9 VAC 5 Chapter 220, "Variance for Rocket Motor Test Operations at Atlantic Research Corporation Orange County Facility" and an opacity variance for the rocket motor test operations at Aerojet Corporation's Orange County Facility, in lieu of the opacity limits established in the Virginia SIP. EPA is approving these revisions to the Commonwealth of Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on November 3, 2009 without further notice, unless EPA receives adverse written comment by October 5, 2009. 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 Docket ID Number EPA-R03-OAR-2009-0520 by one of the following methods:

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

B. *E-mail:*
fernandez.cristina@epa.gov.

C. *Mail:* EPA-R03-OAR-2009-0520, Cristina Fernandez, 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-2009-0520. 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.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 *http://www.regulations.gov* or e-mail. The *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 *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 *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 *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 Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814-2036, or by e-mail at *becoat.gregory@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On January 26, 2004, the Commonwealth of Virginia submitted an opacity variance for the rocket motor

test operations at Aerojet Corporation's Orange County Facility as a revision to its SIP. The variance is included in Title 9 of the Virginia Administrative Code (9 VAC Chapter 220). Virginia established a variance that requires the facility to limit total particulate matter (PM) emissions from its rocket motor test operations to 714 pounds per hour (9 VAC 5-220-30.B), in lieu of opacity limits set forth in regulation 9 VAC 5-50-80.

On February 19, 2009, Virginia Department of Environmental Quality (VADEQ) submitted additional information to support the variance for the rocket motor test operations, which included a comprehensive technical support document (TSD) that provides additional air dispersion modeling information.

II. Description of SIP Revision

This SIP revision consists of the addition of the "Variance for Rocket Motor Test Operations at Atlantic Research Corporation Orange County Facility" (9 VAC 5 Chapter 220) in order to add regulations 9 VAC 5-220-10—Applicability and designation of affected facility, 9 VAC 5-220-20—Definitions, 9 VAC 5-220-30—Applicability of standard for visible emissions and standard for particulate matter, 9 VAC 5-220-40—Compliance determination, monitoring, recordkeeping, and reporting, 9 VAC 5-220-50—Transfer of ownership and 9 VAC 5-220-60—Applicability of future regulation amendments.

The addition of the "Variance for Rocket Motor Test Operations at Atlantic Research Corporation Orange County Facility" (9 VAC 5 Chapter 220) pertains to Atlantic Research Corporation Orange County Facility in terms of applicability and designation, definitions, compliance determination, monitoring, recordkeeping, and recording, transfer of ownership, and applicability of future regulation amendments. This revision does not change the substance of the SIP and consequently, does not interfere with the timely attainment or progress towards attainment of a national ambient air quality standard (NAAQS), nor interfere with any other provision of the CAA, 42 U.S.C. 7401 *et seq.*

The addition of regulation 9 VAC 5-220-30—"Applicability of standard for visible emissions and standard for particulate matter" is to establish PM emission limits for Aerojet Corporation's rocket test operations, in lieu of opacity standards established in regulation 9 VAC 5-50-80. As part of this SIP revision, VADEQ included a modeling analysis titled "Technical

Support Documentation for Opacity Variance for Rocket Test Facility” which demonstrates that emissions from Aerojet Corporation’s Orange County Facility will not cause or significantly contribute to violations of the PM NAAQS. Further details of VADEQ and EPA’s modeling analysis can be found in EPA’s TSD for this rulemaking.

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 CAA, 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 CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving Virginia’s SIP revision to add the “Variance for Rocket Motor Test Operations at Atlantic Research Corporation Orange County Facility” (9 VAC 5 Chapter 220), which includes regulation 9 VAC 5–220–30—“Applicability of standard for visible emissions and standard for particulate matter” to establish PM emission limits for Aerojet Corporation’s rocket test operations in lieu of opacity standards established in regulation 9 VAC 5–50–80. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the “Proposed Rules” section of today’s **Federal Register**, EPA is publishing a separate

document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on November 3, 2009 without further notice unless EPA receives adverse comment by October 5, 2009. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must 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.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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. EPA will submit a report containing this action 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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, pertaining to the Commonwealth of Virginia’s opacity variance for rocket

testing operations at Atlantic Research Corporation’s Orange County Facility, 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, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 26, 2009.
James W. Newsom,
Acting, Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by adding an entry for Chapter 220 to read as follows:

§ 52.2420 Identification of plan.
 * * * * *
 (c) * * *

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
9 VAC 5 Chapter 220	Opacity Variance for Rocket Testing Operations Atlantic Research Corporation’s Orange County Facility			
5–220–10	Applicability and designation of affected facility	12/1/02	09/4/09 [Insert page number where the document begins].	
5–220–20	Definitions	12/1/02	09/4/09 [Insert page number where the document begins].	
5–220–30	Applicability of standard for visible emissions and standard for particulate matter.	12/1/02	09/4/09 [Insert page number where the document begins].	
5–220–40	Compliance determination, monitoring, recordkeeping, and reporting.	12/1/02	09/4/09 [Insert page number where the document begins].	
5–220–50	Transfer of ownership	12/1/02	09/4/09 [Insert page number where the document begins].	
5–220–60	Applicability of future regulations	12/1/02	09/4/09 [Insert page number where the document begins].	
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[FR Doc. E9-21399 Filed 9-3-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 239 and 258**

[EPA-R07-RCRA-2009-0646; FRL-8953-3]

Adequacy of Kansas Municipal Solid Waste Landfill Permit Program**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: This action approves Kansas' Research, Development and Demonstration (RD&D) permit program and updates to the approved Municipal Solid Waste Landfill Permit (MSWLP) program. On March 22, 2004, the EPA issued final regulations allowing RD&D permits to be issued to certain municipal solid waste landfills by approved States. On December 11, 2008, Kansas submitted an application to the EPA seeking Federal approval of its RD&D requirements and to update Federal approval of its MSWLP program.

DATES: This direct final determination is effective November 3, 2009, without further notice unless EPA receives adverse comments by October 5, 2009. If adverse comments are received, EPA will publish a timely response or withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will or will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-RCRA-2009-0646, by one of the following methods:

1. *http://www.regulations.gov*: Follow the online instructions for submitting comments.

2. *E-mail*: cruise.nicole@epa.gov.

3. *Mail*: Send written comments to Nicole Cruise, EPA Region 7, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier*: Deliver your comments to Nicole Cruise, EPA Region 7, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA-R07-RCRA-2009-0646. 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.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 *http://www.regulations.gov* or e-mail. The *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 *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 *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., 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. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Nicole Cruise at (913) 551-7641, or by e-mail at cruise.nicole@epa.gov.

SUPPLEMENTARY INFORMATION:**A. Background**

On March 22, 2004, the EPA issued final regulations allowing RD&D permits to be issued at certain municipal solid waste landfills (69 FR 13242). This new

provision may only be implemented by an approved State. While States are not required to seek approval for this new provision, those States that are interested in providing RD&D permits to municipal solid waste landfills must seek approval from EPA before issuing such permits. Kansas received final approval for 40 CFR part 258 provisions on June 24, 1996 (61 FR 32434). This request incorporates the November 27, 1996, final rule (61 FR 60328) for financial assurance mechanisms for local governments; the July 29, 1997, final rule (62 FR 40708) for revisions to criteria for small municipal solid waste landfills; and the April 10, 1998, final rule (63 FR 17706) for financial test and corporate guarantee to financial assurance mechanisms. Approval procedures for new provisions of 40 CFR part 258 are outlined in 40 CFR 239.12. On December 11, 2008, Kansas submitted an application for approval of its RD&D permit provisions and update of the approved MSWLP program.

B. Decision

After a thorough review, EPA determined that Kansas' RD&D permit provisions and its updated rules for its Municipal Solid Waste Landfill Permit Program, as defined under Kansas Statutes Annotated (KSA) Chapter 65—Public Health, Article 34—Solid Waste, Kansas Administrative Regulations (KAR), Agency 28—Kansas Department of Health and Environment, Article 29—Solid Waste Management are adequate to ensure compliance with the Federal criteria as defined at 40 CFR 258.4.

C. Statutory and Executive Order Reviews

This action approves State solid waste requirements pursuant to Resource Conservation and Recovery Act (RCRA) Section 4005 and imposes no Federal requirements. Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. *Executive Order 12866*: Regulatory Planning Review—The Office of Management and Budget has exempted this action from its review under Executive Order (EO) 12866;

2. *Paperwork Reduction Act*: This action does not impose an information collection burden under the Paperwork Reduction Act;

3. *Regulatory Flexibility Act*: After considering the economic impacts of today's action on small entities under the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities;