EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA Approval date	Explanation
* *	*	*	*	* *
Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS.	Statewide	04/04/13	08/26/16, [Insert Federal Register citation].	This action addresses the following CAA element: 110(a)(2)(D(i)(II) prong 4.

■ 3. Section 52.1683 is amended by adding paragraph (o) to read as follows:

§ 52.1683 Control strategy: Ozone.

* * * * *

(o) The portion of the SIP submitted on April 4, 2013 addressing Clean Air Act section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS is disapproved.

[FR Doc. 2016–20411 Filed 8–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0233; FRL–9951–41–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Control of Emissions of Volatile Organic Compounds From the Reynolds Consumer Products LLC—Bellwood Printing Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Commonwealth of Virginia (Virginia) state implementation plan (SIP). The revision would remove a consent agreement and order (consent order) previously included in the Virginia SIP to address reasonably available control technology (RACT) requirements for volatile organic compounds (VOCs) control at the Reynolds Consumer Product LLC (Reynolds) plant and include a state operating permit in the SIP to continue to address RACT requirements for the Reynolds plant. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on October 25, 2016 without further notice, unless EPA receives adverse written comment by September 26, 2016. 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 No. EPA–R03–OAR–2016–0233 at *http://www.regulations.gov,* or via email to *fernandez.cristina@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

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

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2015, the Commonwealth of Virginia through the Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP. The SIP revision submittal seeks to include state operating permit conditions and terms for the control of emissions of VOCs from Reynolds' plant located in Chesterfield, Virginia, in the Richmond Area, in order to address VOC RACT requirements for Reynolds. Previously, VOC RACT requirements for Reynolds were addressed via inclusion in the Virginia SIP of a Consent Order between VADEQ and Reynolds. This SIP revision submittal seeks to remove the prior Reynolds' consent order included in the SIP and replace it with nearly identical VOC RACT requirements now contained for the Reynolds' plant in a state operating permit. The SIP revision submittal also contains minor administrative and technical changes related to VOCs compared to the Reynolds' consent order; however, the substantive provision of VOC RACT remains the same for the Reynolds' plant, thus the minor administrative and technical changes have no effect on facility operation, VOC emissions, or air quality.

The Virginia SIP provides that the Commonwealth of Virginia's State Air Pollution Control Board must, on case-by-case basis, determine RACT for VOCs from major sources for which EPA has not issued a control technology guideline (CTG). EPA defines RACT as ''the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.'' 44 FR 53761 (September 17, 1979). The Richmond Area was originally designated as a ''moderate'' ozone nonattainment area under the 1-hour ozone national ambient air quality standard (NAAQS), and thereby had to meet the non-CTGs RACT requirements under section 182 of the CAA (56 FR 56694, November 6, 1991). Reynolds' printing plant was identified as being subject to non-CTG RACT. The facility underwent a RACT analysis, and a federally-enforceable consent order was issued to the facility on October 30, 1986. The order was then submitted to EPA as a SIP revision, and approved into the Commonwealth's SIP on June 6, 1996 (61 FR 29963).

II. Summary of SIP Revision

The SIP revision removes the prior Reynolds' consent order included in the

SIP and replaces it with nearly identical VOC RACT requirements now contained for the Reynolds' plant in a state operating permit. Including the permit in the SIP will continue to implement RACT requirements for the plant, a major source of VOCs, as required by sections 172 and 182(b) of the CAA. The permit established control technology and other requirements for the control of VOC emissions from the Reynolds' plant in the Richmond Area. The permit incorporates only the conditions of the consent order, along with general permit conditions relating to testing, right of entry, and change of ownership. All operational requirements are limited in scope to those required by the consent order approved into the Commonwealth's SIP on June 6, 1996 (61 FR 29963). This includes process requirements to control VOC emissions, process emission limits, and on-site records.

The Commonwealth of Virginia's SIP revision also corrects two typographical errors in the formula used to calculate the estimated percent reduction in VOC emissions at Reynolds' plant for X14 (total actual solvent usage for time period) and X15 (total estimated solvents the plant is capable of using if water based materials were not used). The formula with the typographical errors was approved into the Commonwealth's SIP on June 6, 1996 (61 FR 29963). The revised formula for the state operating permit merely corrects a typographical mistake made within the consent order but does not alter how VOCs are or were calculated nor affect VOC emissions from the plant. A more detailed description of the state submittal and EPA's evaluation is included in a technical support document (TSD) prepared in support of this rulemaking action.

III. Final Action

EPA is approving the October 26, 2015 submittal for the purpose of removing a consent order previously included in the Virginia SIP to address RACT requirements for VOC control at the Reynolds' plant and including Reynolds' state operating permit in the SIP to continue to address RACT requirements for Reynolds. EPA also approves the minor administrative and technical changes in the formula used to calculate the estimated percent reduction in VOC emissions. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of this **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 *October 25, 2016* without further notice unless EPA receives adverse comment by *September 26, 2016.* 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.

IV. 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 that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) 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.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of a revision removing the prior Reynolds' consent order included in the SIP and replacing it with nearly identical VOC RACT requirements now contained for the Reynolds' plant in a state operating permit. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into

that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update of the SIP compilation.[1] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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).

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, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and 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). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

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 October 25, 2016. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action.

This action removing a consent order previously included in the Virginia SIP to address RACT requirements for VOCs control at Reynolds plant and including Reynolds' state operating permit in the SIP to continue to address RACT requirements for Reynolds; as well as, making minor administrative and technical changes in the formula used to calculate the estimated percent reduction in VOC emissions, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 12, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for 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 (d) is amended by revising the entry for Reynolds Metals Co.-Bellwood to read as follows:

§ 52.2420 Identification of plan.

* * * * *

[1] 62 FR 27968 (May 22, 1997).

(d) * * *

EPA-APPROVED SOURCE SPECIFIC REQUIREMENTS

Source name	Permit/order or registration No.	State effective date	EPA approval date	40 CFR part 52 citation
* * *	*	*	*	*
Reynolds Metals Co.-Bellwood	50260	10/20/2015	8/26/2016 [Insert ***Federal Register*** citation].	52.2465(c)(110)
* * *	*	*	*	*

* * * * *

[FR Doc. 2016–20299 Filed 8–25–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 09–230; FCC 16–105]

Television Broadcasting Services; Seaford, Delaware

AGENCY: Federal Communications Commission.

ACTION: Final rule; application for review.

SUMMARY: In this Memorandum Opinion and Order, the Commission denies the application for review of the Media Bureau's dismissal of a petition for reconsideration of decisions that allotted VHF television channel 5 to Seaford, Delaware. The Media Bureau had dismissed the petition for reconsideration challenging the Seaford allotment because it was untimely filed and the Commission concludes that there is no basis to waive the statutory deadline for the filing of petitions for reconsideration.

DATES: August 26, 2016.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller, Media Bureau, (202) 418–1507, or by email at *Jeremy.Miller@fcc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to sections 331(a) and 307(b) of the Communications Act, this is a synopsis of the Commission's Memorandum Opinion and Order, MB Docket No. 09–230, adopted August 3, 2016, and released August 4, 2016. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis of Memorandum Opinion and Order

The Commission has before it for consideration an Application for Review filed by PMCM TV, LLC (''PMCM''), seeking review of three decisions by the Video Division of the Media Bureau (the ''Division''): (1) The *Seaford Report and Order* that allotted very high frequency (''VHF'') television channel 5 to Seaford, Delaware; (2) the *Seaford MO&O on Reconsideration* rejecting a petition for reconsideration of the *Seaford Report and Order* and (3) the *Seaford MO&O on Further Reconsideration* dismissing PMCM's petition for reconsideration of the prior *Seaford* decisions as untimely. For the reasons set forth below, we deny the AFR and affirm the Division's dismissal of the PMCM Petition.[1]

In ordering the Seaford allotment, the Commission concluded that the outcome of PMCM's Reallocation Request was not relevant. PMCM did not seek reconsideration of that finding until nearly three years later when, for the first time, it opposed the new Seaford allotment that it had previously ''strongly'' supported. In hindsight, PMCM now argues that the Commission should have postponed allocating a new channel to Delaware while its efforts to reallocate channel 2 played out at the Commission and in court, even though the pendency of that litigation did not prevent PMCM from raising other concerns premised on a favorable outcome regarding its Reallocation Request, and the Seaford allotment is consistent with that request.[2] In short, it appears that PMCM simply changed its strategy as developments unfolded.

The staff was correct in determining that PMCM's Petition for Reconsideration of the *Seaford Report and Order* was untimely. Section 405 of the Act provides that ''petitions for reconsideration must be filed within thirty days from the date upon which public notice is given of the action . . . complained of.'' Public notice of the *Seaford Report and Order* was given on May 7, 2010. The Petition for Reconsideration was filed on March 15, 2013, on the basis that allotment of a new channel to Seaford was improper. PMCM's claim that its Petition was timely because it was filed within 30 days after issuance of the *Seaford MO&O on Further Reconsideration* is entirely without merit. PMCM's Petition challenged the allocation adopted in the *Seaford Report and Order,* not the Commission's rejection of BMC's argument that the Commission should have placed the new allocation at channel 2 or 3. As to its request for reconsideration of the *Seaford MO&O on Reconsideration,* the Petition therefore was an impermissible collateral challenge to the *Seaford Report and Order.* The deadline for filing the Petition therefore was 30 days after public notice of the *Seaford Report and Order,* not 30 days after public

[1] An Application for Review must establish that the actions of the delegated authority: (i) Conflicted with statute, regulation, case precedent or Commission policy; (ii) involved a question of law or policy not previously resolved by the Commission; (iii) involved precedent or policy that should be overturned or revised; (iv) made an erroneous finding as to an important fact; or (v) made a prejudicial procedural error.

[2] PMCM now attempts to excuse its failure to object to the Seaford allotment earlier on the grounds that it had no reason to object to the proposal to place the allotment in Seaford, in Southern Delaware, which lacked robust broadcast service, but its interests changed when Western Pacific applied to change the community of license to Dover. PMCM even sought to bid in the auction for channel 5. As to its objection to an allotment in Dover, WMDE's application for a change in community of license is the proper proceeding for the airing of this grievance, and in fact, PMCM has sought reconsideration of the Bureau's decision in that proceeding.