

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.

III. Proposed Action

EPA is proposing to approve the Virginia SIP revision for amendments to the existing air quality standards, 9 VAC 5 Chapter 30. The Commonwealth's SIP revision (9 VAC 5-30-65) includes an incorrect reference of the **Federal Register** document for the annual and 24-hour PM_{2.5} NAAQS that were established by the EPA on July 18, 1997 (62 FR 38652). EPA will not promulgate a final approval rule until the Commonwealth of Virginia submits a correction to 9 VAC 5 Chapter 30. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 Clean Air Act; 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 proposed rule, amending ambient air quality standards for particulate matter in the Commonwealth of Virginia, 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Particulate matter, Reporting and

recordkeeping requirements, Sulfur oxides.

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

Dated: November 6, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E8-27192 Filed 11-14-08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R03-OAR-2007-0453; FRL-8741-4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Pittsburgh-Beaver Valley 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan; Withdrawal of Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; withdrawal.

SUMMARY: EPA is withdrawing the proposed rule to approve a redesignation request and a maintenance plan State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. In a proposed rule published on July 11, 2007, EPA proposed to approve a request that the Pittsburgh-Beaver Valley, Pennsylvania, ozone nonattainment area (the Pittsburgh Area) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS) that was promulgated on July 18, 1997. In conjunction with the proposed action on the redesignation request, we also proposed to approve a maintenance plan for the Pittsburgh Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation, and, to approve a 2002 base year inventory for the Pittsburgh Area. On May 29, 2008, the Pennsylvania Department of Environmental Protection (PADEP) submitted a letter to formally withdraw the redesignation request and the maintenance plan SIP revision.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814-2179, or by e-mail at cripps.christopher@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we", "us", or "our" is used, we mean EPA.

I. Background

On April 26, 2007, the PADEP formally submitted a request to

redesignate the Pittsburgh Area from nonattainment to attainment of the 8-hour NAAQS promulgated on July 18, 1997 (62 FR 38856) (the "1997 8-hour ozone NAAQS").¹ Concurrently, on April 26, 2007, the PADEP submitted a maintenance plan for the Pittsburgh Area as a SIP revision to ensure continued attainment of the 8-hour NAAQS for at least 10 years after redesignation. The PADEP also submitted a 2002 base year inventory as a SIP revision on April 26, 2007.

In a proposed rule published on July 11, 2007 (72 FR 37683) in the **Federal Register**, EPA proposed to determine that the Pittsburgh Area had attained the 1997 8-hour ozone NAAQS. In addition, we proposed to approve the April 26, 2007, request that the Pittsburgh Area be redesignated as attainment for the 1997 8-hour NAAQS. *See*, 72 FR 37683 at 38864, 38866, July 11, 2008.

In the proposed rule published on July 11, 2007, we also proposed to approve two SIP revisions: (1) A maintenance plan for the Pittsburgh Area that provides for continued attainment of the 1997 8-hour ozone NAAQS for at least 10 years after redesignation including the motor vehicle emissions budgets (MVEBs) that were identified in this maintenance plan; and (2) a 2002 base year inventory for the Pittsburgh Area.

On May 29, 2008, the PADEP submitted a letter to formally withdraw the redesignation request and the maintenance plan SIP revision. On August 1, 2008, PADEP affirmed that the Commonwealth was not withdrawing the 2002 base year emissions inventory SIP revision submitted on April 26, 2007, and submitted a redacted SIP revision which contained only the 2002 base year emissions inventory.

Now that the Commonwealth of Pennsylvania has withdrawn the redesignation request and the maintenance plan SIP revision from our consideration, we must withdraw our proposed actions on the redesignation request and on the maintenance plan and its associated MVEBs. In addition, we are withdrawing our proposed determination that the Pittsburgh Area has attained the 1997 8-hour ozone NAAQS.

The other proposed action published on July 11, 2007, on the SIP revision consisting of the 2002 base year inventory for the Pittsburgh Area is neither affected by this notice nor

withdrawn. In this notice to withdraw the proposed rulemaking actions on the maintenance plan SIP revision and the redesignation request, EPA is not instituting a second comment period on the proposed action to approve the 2002 base year inventory for the Pittsburgh Area. EPA will make its final decision on the 2002 base year inventory for the Pittsburgh Area in a separate rulemaking action.

II. Withdrawal of Proposed Actions

Therefore, EPA is withdrawing the following proposed approval actions published on July 11, 2007 (72 FR 37683 at 37694): (1) The determination that the Pittsburgh Area has attained the 1997 8-hour ozone NAAQS; (2) the Commonwealth's April 26, 2007, request that the Pittsburgh Area be designated to attainment of the 1997 8-hour NAAQS for ozone; and (3) the maintenance plan and its MVEBs for the Pittsburgh Area, which was submitted on April 26, 2007, as revision to the Pennsylvania SIP.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: November 7, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E8-27211 Filed 11-14-08; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08-2439; MB Docket No. 08-217; RM-11434]

Radio Broadcasting Services; Kihei, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comment on a petition filed by Shirk-Mays, LLC, requesting the allotment of FM Channel 264C2 at Kihei, Hawaii, as a third local aural service. The reference coordinates for Channel 264C2 at Kihei are 20-39-36 NL and 156-21-50 WL.

DATES: Comments must be filed on or before December 22, 2008, and reply comments on or before January 6, 2009.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Richard J. Hayes, Jr., Esq., Post Office Box 200, Lincolnville, ME 04849 (Counsel for Shirk-Mays, LLC).

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08-217, adopted October 29, 2008, and released October 31, 2008. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

¹ On March 27, 2008 (73 FR 16436), EPA revised the level of the primary and secondary 8-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm, but the Pittsburgh Area has not yet been designated under this revision to the NAAQS.