

■ 2. Revise § 165.814(a)(5) to read as follows: § 165.814 Security Zones; Captain of the Port Houston-Galveston Zone.

(a) \* \* \*

(5) *Freeport, Texas.* (i) The Dow Barge Canal, containing all waters of the Dow Barge Canal north of a line drawn between 28°56.81' N/095°18.33' W and 28°56.63' N/095°18.54' W (NAD 1983).

(ii) The Brazos Harbor, containing all waters west of a line drawn between 28°56.45' N, 095°20.00' W, and 28°56.15' N, 095°20.00' W (NAD 1983) at its junction with the Old Brazos River.

(iii) The Dow Chemical plant, containing all waters of the Brazos Point Turning Basin within 100' of the north shore and bounded on the east by the longitude line drawn through 28°56.58' N/095°18.64' W and on the west by the longitude line drawn through 28°56.64' N/095°19.13' W (NAD 1983).

(iv) The Seaway Teppco Facility, containing all waters of the Brazos Port Turning Basin bounded on the south by the shore, the north by the Federal Channel, on the east by the longitude line running through 28°56.44' N, 095°18.83' W and 28°56.48' N, 095°18.83' W and on the West by the longitude line running through 28°56.12' N, 095°19.27' W and 28°56.11' N, 095°19.34' W (NAD 1983).

(v) The Conoco Phillips Facility docks, containing all waters within 100' of a line drawn from a point on shore at Latitude 28°55.96' N, Longitude 095°19.77' W, extending west to a point on shore at Latitude 28°56.19' N, Longitude 095°20.07' W (NAD 1983).

\* \* \* \* \*

Dated: January 7, 2010.

**M.E. Woodring,**

*Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.*

[FR Doc. 2010-3814 Filed 2-24-10; 8:45 am]

BILLING CODE 9110-04-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2009-0871; FRL-9116-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to the Definition of Volatile Organic Compound and Other Terms

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the

Virginia State Implementation Plan (SIP). The revisions amend the wording of 22 definitions, including the definition of Volatile Organic Compound (VOC). EPA is approving these revisions to Virginia's definitions in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on April 26, 2010 without further notice, unless EPA receives adverse written comment by March 29, 2010. 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-2009-0871 by one of the following methods:

A. [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.

B. E-mail: [frankford.harold@epa.gov](mailto:frankford.harold@epa.gov).

C. Mail: EPA-R03-OAR-2009-0871, Harold A. Frankford, Air Protection Division, Mailcode 3AP00, 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-2009-0871. 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:** Harold A. Frankford, (215) 814-2108, or by e-mail at [frankford.harold@epa.gov](mailto:frankford.harold@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On October 6, 2009, the Commonwealth of Virginia submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of amendments to 22 definitions listed in 9VAC5 Chapter 10 (General Definitions), Regulation 5-10-20 (Terms defined). The amended terms are:

Ambient air quality standard, Criteria pollutant, Dispersion technique, Emission limitation, Emission standard, Excessive concentration, Federal Clean Air Act, Federally enforceable, Good engineering practice, Initial emission test, Initial performance test, Public hearing, Reference method, Regulations for the Control and Abatement of Air Pollution, Reid vapor pressure, Run, Standard of performance, State enforceable, These regulations, True vapor pressure, Vapor pressure, and Volatile organic compound.

##### II. Summary of SIP Revision

Virginia amended the definition of "Volatile organic compound" to add the organic compound (1)1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300) to

the list of excluded compounds. The exclusion of this compound is consistent with the list of excluded compounds found in EPA's definition of "Volatile organic compounds (VOC)" at 40 CFR 51.100(s)(1).

Virginia amended the 21 additional terms to be consistent with the format of Commonwealth regulations as prescribed by the Commonwealth's Registrar of Regulations. The amendments are administrative in nature and do not alter the meaning or intent of these defined terms.

### III. General Information Pertaining to 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 the amendments to Virginia Regulation 9VAC5-10-20 (Terms defined) as a revision to the Virginia State Implementation Plan. 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 April 26, 2010 without further notice unless EPA receives adverse comment by March 29, 2010. 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.

### V. Statutory and Executive Order Reviews

#### A. General Requirements

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 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 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 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 26, 2010. 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 today’s **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. This action to approve 22 amended terms in Virginia’s General Definitions regulation as a

revision to the Virginia SIP 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 1, 2010.

**William C. Early,**  
*Acting Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority for 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 (c) is amended by revising the sixth entry for 5–10–20 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 10.	General Definitions			[Part I]
* * * * *				
5–10–20 .....	Terms Defined	4/2/09	2/25/10 [ <i>Insert page number where the document begins</i> ].	Revised definitions of Ambient air quality standard, Criteria pollutant, Dispersion technique, Emission limitation, Emission standard, Excessive concentration, Federal Clean Air Act, Federally enforceable, Good engineering practice, Initial emission test, Initial performance test, Public hearing, Reference method, Regulations for the Control and Abatement of Air Pollution, Reid vapor pressure, Run, Standard of performance, State enforceable, These regulations, True vapor pressure, Vapor pressure, and Volatile organic compound.
* * * * *				

\* \* \* \* \*  
 [FR Doc. 2010-3509 Filed 2-24-10; 8:45 am]  
 BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2004-OH-0004; FRL-9107-4]

### Approval and Promulgation of Implementation Plans; Ohio New Source Review Rules

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving revisions to the prevention of significant deterioration (PSD) and nonattainment new source review (NSR) construction permit programs to the Ohio State Implementation Plan (SIP) based on the State's November 15, 2005, letter. The Ohio Environmental Protection Agency (OEPA) is seeking approval of its rules to implement the NSR Reform provisions that were not vacated by the United States Court of Appeals for the District of Columbia (DC Circuit) in *New York v. EPA*. EPA proposed approval of these rules on May 11, 2005 and received adverse comments. In this action, EPA responds to these comments and announces EPA's final rulemaking action. This action affects major stationary sources in Ohio that are subject to or potentially subject to the PSD and NSR construction permit programs.

**DATES:** This final rule is effective on March 29, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2004-OH-0004. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (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 through <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that

you telephone Genevieve Damico, Environmental Engineer, at (312) 353-4761 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Genevieve Damico, Environmental Engineer, Air Permit Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4761, [damico.genevieve@epa.gov](mailto:damico.genevieve@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Is Being Addressed by This Document?
- II. What Sections of Ohio's Rules Are We Approving in Today's Action?
- III. How Has This Rulemaking Been Affected by the June 24, 2005 DC Circuit Court of Appeals?
- IV. What Are EPA's Responses to Adverse Comments?
- V. What Action Is EPA Taking Today?
- VI. Statutory and Executive Order Review

#### I. What Is Being Addressed by This Document?

We are partially approving revisions to the PSD and nonattainment NSR construction permit programs of the State of Ohio. EPA fully approved Ohio's nonattainment NSR program on January 10, 2003 (68 FR 1366). EPA fully approved Ohio's PSD program on January 22, 2003 (68 FR 2909).

On December 31, 2002, EPA published revisions to the Federal PSD and NSR regulations in 40 CFR Parts 51 and 52 (67 FR 80186). These revisions are commonly referred to as "NSR Reform" regulations and became effective on March 3, 2003. These regulatory revisions include provisions for baseline emissions determinations, actual-to-future actual methodology, plantwide applicability limits (PALs), clean units, and pollution control projects (PCPs). As stated in the December 31, 2002, EPA rulemaking, State and local permitting agencies must adopt and submit revisions to their part 51 permitting programs implementing the minimum program elements of that rulemaking no later than January 2, 2006 (67 FR 80240). OEPA submitted these regulatory revisions for parallel processing on September 14, 2004, which was prior to final adoption of the State rules. Ohio adopted the final rules on October 28, 2004. EPA proposed conditional approval of these rules on May 11, 2005 (70 FR 24734). On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued its ruling on challenges to the December 2002 NSR reform revisions. *New York v. EPA*, 413 F.3d 3

(DC Cir. 2005). Although the court did uphold most of EPA's rules, it vacated both the clean unit and the PCP provisions. As a result of this court ruling, OEPA submitted a letter to EPA on November 15, 2005, amending its request for approval of Ohio's rule. Specifically, Ohio withdrew its request for approval of the clean units and PCP portions of the Ohio rules.

#### II. What Sections of Ohio's Rules Are We Approving in Today's Action?

*Ohio Administrative Code (OAC) 3745-31-01 Definitions*

##### Definitions Unchanged From Proposal

In accordance with the May 11, 2005 proposal, EPA is approving the definitions for actual emissions, actuals PAL, baseline actual emissions, baseline concentration, best available control technology, continuous emission monitoring system, continuous emissions rate monitoring system, continuous parameter monitoring system, emission unit, lowest achievable emission rate, major source baseline date, major stationary source, minor source baseline, new source review project, nonattainment or nonattainment area, nonattainment new source review permit, PAL allowable emissions, PAL effective date, PAL effective period, PAL major emissions unit, PAL major modification, PAL permit, PAL pollutant, PAL significant emissions unit, PAL small emissions unit, particulate matter, particulate matter emissions, plantwide applicability limit, PM10, PM10 emissions, total suspended particulate, pollution prevention, predictive emissions monitoring system, prevention of significant deterioration increment, prevention of significant deterioration permit, projected actual emission, regulated NSR pollutant, replacement unit, representative actual annual emissions, significant emissions increase, and stationary source in OAC 3745-31-01(C), (D), (O), (Q), (S), (EE), (FF), (GG), (MM), (FFF), (JJJ), (KKK), (NNN), (UUU), (VVV), (WWW), (CCCC), (DDDD), (EEEE), (FFFF), (GGGG), (HHHH), (III), (JJJJ), (KKKK), (LLLL), (MMMM), (OOOO), (PPPP), (QQQQ), (UUUUU), (SSSS), (VVVV), (WWWW), (XXXX), (ZZZZ), (DDDDD), (EEEE), (KKKKK), (LLLLL), and (PPPPP) respectively. EPA is also approving the definitions in OAC 3745-31-01, the non-40 CFR 51.166 and 51.165 definitions in OAC 3745-31-01 (E), (J), (M), (X), (JJ), (QQ), (DDD), (EEE), (XXX), (HHHHH), and (XXXXX) and the minor revisions to the definitions for "available information", "baseline area", "baseline concentration", "best available