

(d) *Effective Date and Enforcement Periods.* This rule is effective from 6 a.m. on October 8, 2011 through 11:59 a.m. on October 9, 2011. This rule will be enforced daily from 6 a.m. until 11:59 a.m. on October 8, 2011 through October 9, 2011.

Dated: August 22, 2011.

**M.F. White,**

*Captain, U.S. Coast Guard, Captain of the Port Charleston.*

[FR Doc. 2011-22491 Filed 9-1-11; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2010-0856; FRL-9459-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The revision establishes the addition of nitrogen oxides (NO<sub>x</sub>) as a precursor to ozone in Virginia for permits of major stationary sources or major modifications locating in Prevention of Significant Deterioration (PSD) areas. EPA is approving the addition of NO<sub>x</sub> as a precursor to ozone based on the Virginia regulations dated December 31, 2008. A previous PSD program approval of Virginia's Chapter 80, Article 8 regulations was provided to the Commonwealth as a "limited approval" for reasons that will not deny this action as being fully approved. This revision to add NO<sub>x</sub> as a precursor to ozone is in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on October 3, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2010-0856. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, 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 for public inspection 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:** Sharon McCauley, (215) 814-3376, or by e-mail at [mccauley.sharon@epa.gov](mailto:mccauley.sharon@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On May 23, 2011 (76 FR 29686), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of including NO<sub>x</sub> as a precursor to ozone for permitting and the construction of new major stationary sources and the significant modification of existing major stationary sources of air pollutants in areas designated attainment or non-classifiable for the National Ambient Air Quality Standards (NAAQS) in Virginia. The formal SIP revision was submitted by Virginia on June 7, 2010.

This approval establishes NO<sub>x</sub> as a precursor to ozone, in addition to volatile organic compounds (VOC), in the definitions of "major modification", "major stationary source", "regulated New Source Review (NSR) pollutant" and "significant" and to the list of exempted facilities. Virginia's regulations adding NO<sub>x</sub> as a precursor to ozone establishes a construction permit program consistent with the Federal CAA's Title I program and implementing regulations at 40 CFR 51.166, "Prevention of Significant Deterioration of Air Quality." VADEQ's regulation 9VAC5 Chapter 80, Article 8 is part of the SIP and sets forth the criteria and procedures for major stationary sources to obtain a permit to construct, operate and/or modify a major stationary source.

Previously, EPA had issued a "limited approval" of Virginia's PSD regulations (9VAC5 Chapter 80, Article 8) for reasons that will not deny this action as being fully approved. The "limited approval" issues can be found in the Technical Support Document contained in this Docket or in the **Federal Register** action dated October 22, 2008 (73 FR 62897).

## II. Summary of SIP Revision

Our review of Virginia's SIP revision request indicates that our approval of this SIP revision is warranted. These changes to the Virginia program are found in the Virginia Code at 9VAC5 Chapter 80, Article 8, Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas. EPA is approving NO<sub>x</sub> as a precursor to ozone in addition to VOCs in the definitions of "major modification", "major stationary source", "regulated New Source Review (NSR) pollutant" and "significant" and to the list of exempted facilities as a revision to the Virginia SIP.

This SIP approval for 9VAC5-80-1615 and 9VAC5-80-1695 addresses regulatory changes needed to be equivalent to the CAA's part C PSD permit program. It also corrects deficiencies identified by EPA in the March 27, 2008 **Federal Register** action entitled, "Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone National Ambient Air Quality Standards (1997 Ozone NAAQS)" (73 FR 16205). EPA's approval of this SIP submission addresses Virginia's compliance with the portion of CAA Section 110(a)(2)(C) & (J) relating to the CAA's part C PSD permit program for the 1997 Ozone NAAQS, because this approval will allow regulating NO<sub>x</sub> as a precursor to ozone in Virginia's SIP in accordance with the **Federal Register** action dated November 29, 2005 (70 FR 71612) that finalized NO<sub>x</sub> as a precursor for ozone regulations set forth at 40 CFR 51.166 and in 40 CFR 52.21.

We are fully approving these regulatory citation changes which became effective in Virginia on December 31, 2008, as referenced here in this document and in the Virginia Code of Regulations 9VAC5 Chapter 80, Article 8, sections 5-80-1615 and 5-80-1695 which establish NO<sub>x</sub> as a precursor to ozone, into the Virginia SIP.

## 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 PSD 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.

Other specific requirements of NO<sub>x</sub> as a precursor to ozone and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

### III. Final Action

EPA is approving the addition of NO<sub>x</sub> as a precursor to ozone for PSD as a revision to the Virginia SIP.

### IV. 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 1, 2011. 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 to approve NO<sub>x</sub> as a precursor to ozone in Virginia 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 22, 2011.

W.C. Early,

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 revising the entries for Sections 5–80–1615 and 5–80–1695 to read as follows:

#### § 52.2420 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

#### EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
<b>9 VAC 5, Chapter 80 Permits for Stationary Sources</b>				
*	*	*	*	*
<b>Article 8 Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration (PSD) Areas</b>				
5–80–1615	Definitions	12/31/08	9/2/11 [Insert page number where the document begins].	Adds NO <sub>x</sub> as a precursor to ozone. Limited approval remains in effect.
5–80–1695	Exemptions	12/31/08	9/2/11 [Insert page number where the document begins].	Adds NO <sub>x</sub> as a precursor to ozone. Limited approval remains in effect.
*	*	*	*	*

\* \* \* \* \*  
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#### DEPARTMENT OF HOMELAND SECURITY

#### Federal Emergency Management Agency

#### 44 CFR Part 64

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–8193]

#### Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain

management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

**DATES:** *Effective Dates:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

**FOR FURTHER INFORMATION CONTACT:** If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not

otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be