

Latitude by 122°21'03.59" W Longitude at the eastern extreme.

(b) *Effective Dates.* This rule is effective from June 26, 2006 through September 24, 2006. If the need for the safety zone ends prior to the scheduled termination time, the Captain of the Port will cease enforcement of the safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone by all vessels and persons is prohibited, unless specifically authorized by the Captain of the Port San Francisco, or his designated representative.

(d) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, or the designated on-scene patrol personnel. Patrol personnel can be comprise of commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and Federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

The U.S. Coast Guard may be assisted in the patrol and enforcement of these two safety zones by local law enforcement as necessary.

Dated: June 23, 2006.

**W.J. Uberti,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco, California.*

[FR Doc. E6-10980 Filed 7-12-06; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2005-VA-0015; FRL-8196-8]

### Approval and Promulgation of Air Quality Implementation Plans; Virginia; NSR in the Ozone Transport Region

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision establishes and requires major new and major modified sources of volatile organic compounds (VOCs) or nitrogen oxides (NO<sub>x</sub>) to meet certain nonattainment New Source Review (NSR) requirements if they are located (or are proposing to locate) in

Virginia's portion of the Ozone Transport Region (OTR). The intended effect of this action is the approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for NSR in the OTR.

**DATES:** *Effective Date:* This final rule is effective on August 14, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2005-VA-0015. 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

On January 6, 2006 (71 FR 890), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of nonattainment NSR in the OTR. The formal SIP revision was submitted by Virginia on March 28, 2005. The applicable regulations requiring implementation of nonattainment NSR in the Virginia portion of the OTR were adopted by the Virginia State Air Pollution Control Board on September 29, 2004.

The Clean Air Act requires 13 states including the District of Columbia to submit revisions to their State Implementation Plans that will require major new and modified sources of VOCs or NO<sub>x</sub> to meet certain NSR requirements if they are located (or planning to locate) in the OTR. The OTR consists of the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and the Consolidated

Metropolitan Statistical Area that includes the District of Columbia and portions of Virginia.

The areas designated as in the Virginia portion of the OTR are as follows: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

#### II. Summary of SIP Revision

The Commonwealth of Virginia amended its regulations to clarify that areas located in the Virginia portion of the OTR must meet the requirements of Virginia Code Article 9 VAC 5 Chapter 80 (Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas) as if they were classified as moderate nonattainment for ozone, except that the threshold for major stationary sources of VOCs would be 50 tons instead of 100 tons. The changes that are approved in this SIP revision are those that identify and define the OTR locations in Virginia while providing direction to what State regulations sources will need to follow when they are either planning to locate in or are already located in the Virginia portion of the OTR. Changes were made to the State provisions at 9 VAC 5-80-2000, Applicability and 9 VAC 5-80-2010, Definitions.

Sources in the Virginia portion of the OTR are also required to meet offset requirements in 9 VAC 5-80-2120 B 2 for areas classified as moderate nonattainment for ozone. These provisions require all increases of VOC and/or NO<sub>x</sub> emissions attributable to the new or modified source to be offset with emission reductions elsewhere in the Virginia portion of the OTR at a ratio of 1.15 to 1.00.

This approved SIP revision amends the SIP to add new regulatory language indicating that sources in the Virginia portion of the OTR are subject to the requirements of 9 VAC 5-80-2000, et seq. regardless of the nonattainment status of the area where the source is located. This SIP revision also provides that sources located or planning to locate in areas within the OTR that are classified as "serious" or "severe" nonattainment areas are required to meet the respective emission thresholds listed within the State's definition of a "major stationary source" at 9 VAC 5-80-2010 C Section a (1) and (2) and the more restrictive offset requirements located in 9 VAC 5-80-2120 B 3 and B 4, respectively.

### 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 NSR 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 Clean Air Act, 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 Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

Other specific requirements of NSR in the Virginia Ozone Transport Region 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.

### IV. Final Action

EPA is approving NSR in the Ozone Transport Region as a revision to the Virginia SIP.

### V. Statutory and Executive Order Reviews

#### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic

impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*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 rule 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**. This rule 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 September 11, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 NSR in the Virginia portion of the Ozone Transport Region 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 6, 2006.  
**William T. Wisniewski,**  
*Acting Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 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 (c) is amended by revising the entries for Chapter 80, Article 9, Sections 5–80–2000 and 5–80–2010 to read as follows:

**§ 52.2420 Identification of plan.**

\* \* \* \* \*  
 (c) \* \* \*

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* * * * *	<b>Chapter 80 Permits for Stationary Sources [Part VIII]</b>			
* * * * *	<b>Article 9 Permits for Major Stationary Sources and Modifications—Nonattainment Areas</b>			
5–80–2000 .....	Applicability .....	9/29/04	7/13/06 [Insert page number where the document begins]	
5–80–2010 .....	Definitions .....	9/29/04	7/13/06 [Insert page number where the document begins]	
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[R03–OAR–2005–PA–0007; FRL–8192–9]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO<sub>x</sub> RACT Determination for Koppers Industry, Inc.**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for Koppers Industry, Inc. located in Lycoming County. EPA is approving this revision to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

**DATES:** This rule is effective on August 14, 2006.

**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) ID Number R03–OAR–2005–PA–0007. 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