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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R03-OAR-2005-VA-0002; FRL-7904-9]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revision Establishing the Western Virginia VOC and NO<sub>x</sub> Emissions Control Area, and Providing the Enabling Authority for NO<sub>x</sub> RACT Determinations in the Area

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

**ACTION:** Direct final rule.

**SUMMARY:** Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Commonwealth of Virginia State Implementation Plan (SIP) establishing a new volatile organic compound (VOC) and nitrogen oxide (NO<sub>x</sub>) emissions control area. This new area, entitled, the Western Virginia Emissions Control Area, consists of the City of Winchester and Frederick County, Roanoke County, Botetourt County, Roanoke City, and Salem City. EPA is also approving a revision to provide the enabling authority to implement NO<sub>x</sub> Reasonably Available Control Technology (RACT) in the affected areas. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on June 27, 2005 without further notice, unless EPA receives adverse written comment by May 27, 2005. 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 Regional Material in EDocket (RME) ID Number R03-OAR-2005-VA-0002 by one of the following methods:

A. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. Agency Web site: <http://www.docket.epa.gov/rmepub/> RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: [campbell.dave@epa.gov](mailto:campbell.dave@epa.gov).

D. Mail: R03-OAR-2005-VA-0002, David Campbell, Chief, Air Quality

Planning Branch, 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. 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 RME ID No. R03-OAR-2005-VA-0002 EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.docket.epa.gov/rmepub/>, 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 RME, [regulations.gov](http://www.regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://www.regulations.gov) websites are 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 RME or [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 RME index at <http://www.docket.epa.gov/rmepub/>. 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 RME 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:** Ellen Wentworth, (215) 814-2034, or by e-mail at [wentworth.ellen@epa.gov](mailto:wentworth.ellen@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Prior to the final establishment of the 8-hour ozone nonattainment areas, EPA developed a program to allow potential nonattainment areas to voluntarily adopt local emission control programs to avoid air quality violations and mandated nonattainment area controls. Areas with air quality meeting the one-hour ozone standard were eligible to participate. In order to participate, state and local governments and EPA had to develop and sign an Early Action Compact (EAC) agreement with EPA. This agreement outlined the implementation procedures for the EAC program. As part of the EAC process, state and local communities are required to adopt and implement measures to reduce ozone precursor pollutants. In addition, the EAC program requires the preparation of an attainment demonstration.

Several localities in the Winchester and Roanoke areas of Virginia were eligible to participate in the EAC program. The areas that signed an EAC are the City of Winchester and Frederick County, which comprise the Northern Shenandoah Valley EAC, and the cities of Roanoke and Salem, and the counties of Roanoke and Botetourt, which comprise the Roanoke EAC.

In order to support this effort, the Commonwealth has elected to expand its pre-existing list of emission control areas to include the EAC participating localities and to expand its NO<sub>x</sub> RACT regulation to the new emission control area.

##### II. Summary of SIP Revision

On December 22, 2004, and supplemented on February 24, 2005, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision amends the Virginia Code at 9 VAC 5-20-206 to expand the VOC and NO<sub>x</sub> emission control areas to include the Western Virginia Emissions Control Area. This area includes the counties of Botetourt, Frederick, and Roanoke, and the cities of Roanoke, Salem, and Winchester. The revision also authorizes the implementation of NO<sub>x</sub> RACT in the Western Virginia Emissions Control Area.

This SIP revision also includes several amendments to various

regulations in 9 VAC 5–40 which are intended to clarify certain provisions. A more detailed summary of the changes may be found in the technical support document (TSD) prepared for this rulemaking.

### 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 [\*] 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.

### IV. Final Action

EPA is approving a revision to the Commonwealth of Virginia SIP consisting of a regulation establishing the Western Virginia Emissions Control Area, and providing the enabling authority for NO<sub>x</sub> RACT determinations in the affected areas. The regulations are necessary in order to implement the control measures and achieve the emission reductions in the plans for the Roanoke and Northern Shenandoah Valley EAC areas.

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 June 27, 2005 without

further notice unless EPA receives adverse comment by May 27, 2005. 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### 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 (Public Law 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 standard, 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 June 27, 2005. Filing a petition for reconsideration by the Administrator of this final rule approving the expansion of the VOC emission standards to the Western Virginia Emissions Control Area, and providing the enabling authority for NO<sub>x</sub> RACT determinations in the affected areas, 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 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 19, 2005.

**Donald S. Welsh,**  
*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 20 and Chapter 40 to read as follows:

**§ 52.2420 Identification of plan.**

\* \* \* \* \*

(c) *EPA approved regulations and statutes.*

**EPA-APPROVED REGULATIONS AND STATUTES IN THE VIRGINIA SIP**

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* * *	* * *	* * *	* * *	* * *
<b>Chapter 20 General Provisions (Part II)</b>				
5-20-206	Volatile Organic Compound and Nitrogen Oxides Emissions Control Areas.	3/24/04	4/27/05 [Insert page number where the document begins].	
* * *	* * *	* * *	* * *	* * *
<b>Chapter 40 Existing Stationary Sources</b>				
* * *	* * *	* * *	* * *	* * *
<b>Part II Emission Standards</b>				
* * *	* * *	* * *	* * *	* * *
<b>Article 4 General Process Operations (Rule 4-4)</b>				
5-40-240	Applicability and Designation of Affected Facility.	3/24/04	4/27/05 [Insert page number where the document begins].	

EPA-APPROVED REGULATIONS AND STATUTES IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5-40-310A-E	Standard for Nitrogen Oxides	3/24/04	4/27/05 [Insert page number where the document begins].	
<b>Article 37 Petroleum Liquid Storage and Transfer Operations (Rule 4-3)</b>				
5-40-5200	Applicability and Designation of Affected Facility.	3/24/04	4/27/05 [Insert page number where the document begins].	
5-40-5220	Standard for Volatile Organic Compounds.	3/24/04	4/27/05 [Insert page number where the document begins].	

\* \* \* \* \*  
 [FR Doc. 05-8437 Filed 4-26-05; 8:45 am]  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-2005-0080; FRL-7709-2]

**Benoxacor; Partial Grant and Partial Denial of Petition, and Amendment of Tolerance to Include S-Metolachlor**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is granting, in part, and denying, in part, pesticide petition 7E3489 submitted by Syngenta Crop Protection, Inc., and is amending the tolerance for benoxacor at 40 CFR 180.460 to include a reference to S-metolachlor, in addition to the existing reference to metolachlor. EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3) in the **Federal Register** of August 3, 2003 (68 FR 46620) (FRL-7317-6) announcing the filing of a petition requesting that the tolerance expression for the inert ingredient benoxacor (safener) in 40 CFR 180.460 be amended to remove references to metolachlor and replace it with references to S-metolachlor. Although EPA finds it is safe to add a reference to S-metolachlor to this tolerance regulation, EPA does not agree that grounds exist to remove the reference to metolachlor. Thus, EPA is granting Syngenta's petition in as far as it seeks to add the reference to S-metolachlor but is denying the request to remove metolachlor.

**DATES:** This regulation is effective April 27, 2005. Objections and requests for

hearings must be received on or before June 27, 2005.

**ADDRESSES:** To submit a written objection or hearing request, follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP-2005-0080. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. 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 EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Karen Angulo, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460-0001; telephone number: (703) 306-0404; e-mail address: [angulo.karen@epa.gov](mailto:angulo.karen@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

**II. Background and Statutory Findings**

In the **Federal Register** of August 6, 2003 (68 FR 46620) (FRL-7317-6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petition (7E3489) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419-8300. The petition requested that the tolerance expression for the inert ingredient benoxacor (safener) in 40 CFR 180.460