

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[R03-OAR-2005-VA-0008; FRL-7925-6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; VOC Emission Standards in the Hampton Roads VOC Emissions Control Area**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Commonwealth of Virginia State Implementation Plan (SIP). This revision consists of the removal of the exemption from volatile organic compound (VOC) emission standards for sources located in the Hampton Roads VOC Emissions Control Area localities of James City County, York County, Poquoson City, and Williamsburg City. This action is necessary in order for Virginia to meet its obligation to implement contingency measures as a result of the area's violation of the 1-hour ozone standard. This action is being taken in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 19, 2005 without further notice, unless EPA receives adverse written comment by July 20, 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-0008, 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.

D. Mail: R03-OAR-2005-VA-0008, David Campbell, Chief, Air Quality Planning Branch, Mailcode 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-0008. 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.

SUPPLEMENTARY INFORMATION:**I. Background**

On February 22, 2005, the Commonwealth of Virginia submitted a formal revision to its SIP. This SIP revision consists of the removal of the exemption from VOC emission standards for sources located in the Hampton Roads VOC Emissions Control Area localities of James City County, York County, Poquoson City, and Williamsburg City. Sources of VOC emissions in these localities will now be required to meet the emission standards set forth in Chapter 40 of the Regulations for Control and Abatement of Air Pollution. This action is necessary in order for Virginia to implement contingency measures specified in the maintenance plan established for Hampton Roads. The Hampton Roads Area was designated attainment for the 1-hour ozone standard on June 26, 1997 (62 FR 34408), but subsequently violated the standard between 1999 and 2001.

II. Summary of SIP Revision

The Hampton Roads Area, consisting of the localities of James City County, Poquoson City, York County, Portsmouth City, Chesapeake City, Suffolk City, Hampton City, Virginia Beach City, Newport News City, Williamsburg City, and Norfolk City, was classified as a marginal nonattainment area in 1991 (56 FR 56694). The Area was able to achieve the 1-hour ozone standard and was designated attainment for the 1-hour standard on June 26, 1997 (62 FR 34408). The maintenance plan submitted and approved at the time of the redesignation included specific strategies aimed at maintaining air quality and contingency measures in the event the Area measured ozone concentrations above allowable levels. One of the potential measures available was to remove the exemption to meet existing VOC standards provided to sources located in the Hampton Roads Area localities of James City County, York County, Poquoson City, and Williamsburg City. Since the initial promulgation of the VOC emissions control areas in 1979, these four localities had been exempt from meeting the VOC emission standards in 9 VAC-5-40-10, *et seq.* At the time, they were considered to be too rural to make a significant contribution to air pollution in the area. However, due to growth in the area, these localities can no longer be considered rural.

As stated previously, between 1999 and 2001, Hampton Roads recorded four exceedances of the 1-hour ozone standard. As a result, Virginia is required to implement the contingency measures specified in the maintenance plan established for Hampton Roads. One of these measures is the removal of the exemption provided to four localities in the area from existing requirements for limiting VOC emissions. Removal of the exemption will allow Virginia to implement contingency measures required by the maintenance plan with the expectation that the additional VOC reductions provided will ensure that the Area continues to achieve the 1-hour ozone standard.

Chapter 40 of the Regulations for the Control and Abatement of Air Pollution contains a number of regulations with VOC emission standards. The geographic applicability of these rules is defined by establishing VOC emissions control areas in a list located in 9 VAC 5-20-206 of Chapter 20. This list currently exempts existing stationary sources located in James City County, York County, Poquoson City, and Williamsburg City from the applicable VOC standards as set forth in several articles in Chapter 40. This SIP revision amends 9 VAC 5-20-206.1.c. by removing the exemption from the VOC emission standards in Chapter 40 for the four aforementioned localities. These four localities will now be subject to the VOC standards for existing sources as is the case in the other jurisdictions within the Hampton Roads VOC Emissions Control Area. Existing sources of VOC emissions in these localities will now be required to meet the emissions standards set forth in Chapter 40 of the regulations for the control of air pollution.

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 the SIP revision submitted by the Commonwealth of Virginia on February 22, 2005, amending 9 VAC 5-20-206.1.c. by removing the exemption provided to the counties of James City and York, and the cities of Poquoson and Williamsburg, located in the Hampton Roads VOC Emissions Control Area, from existing VOC emission standards. Removal of this exemption will allow Virginia to implement a contingency measure required by its maintenance plan to address a violation of the 1-hour ozone standard.

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 August 19, 2005 without further notice unless EPA receives adverse comment by July 20, 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.

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 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 August 19, 2005. 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, removing the VOC emission standards exemption for four localities located in the Hampton Roads Emissions Control Area, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 13, 2005.
Thomas Voltaggio,
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 Section 52.2420, the table in paragraph (c) is amended by adding an entry for Chapter 20, section 5-20-206 after the existing entry for 5-20-206 to read as follows:

§ 52.2420 Identification of plan.

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 (c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

| State citation (9 VAC 5) | Title/subject | State effective date | EPA approval date | Explanation [former SIP citation] |
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| * | * | * | * | * |
| CHAPTER 20 General Provisions—(Part II) | | | | |
| 5-20-206 | Volatile Organic Compound and Nitrogen Oxides Emissions Control Areas. | 3/24/04 | 6/20/05 [Insert page number where the document begins] | Revised 5-20-206.1.c. applicable to the Hampton Roads VOC Emissions Control Area. |
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[FR Doc. 05-12078 Filed 6-17-05; 8:45 am]

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