

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 29, 2008.

**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 V—Maryland**

■ 2. In (52.1070, the table in paragraph (c) is amended by revising the entries for COMAR 10.18.08.01 and 10.18.08.05 to read as follows:

**§ 52.1070 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA-APPROVED REGULATIONS IN THE MARYLAND SIP**

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR § 52.1100
* * * * *				
COMAR 10.18.08/26.11.08			Control of Incinerators	
10.18.08/26.11.08.01	Definitions	9/12/05	9/15/08 [Insert page number where the document begins].	Definition of “crematory” is added.
* * * * *				
10.18.08/26.11.08.05	Particulate Matter	9/12/05	9/15/08 [Insert page number where the document begins].	Sections .05A(3) and .05B(2)(a) are revised.
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[FR Doc. E8-21310 Filed 9-12-08; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R03-OAR-2008-0333; FRL-8714-4]

**Approval and Promulgation of Air Quality Implementation Plans; Virginia, Reasonably Available Control Technology (RACT) for Norfolk Southern Corporation**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia removing a nitrogen oxide (NO<sub>x</sub>) reasonably available control technology (RACT) permit from the Virginia SIP for sources located at the Norfolk Southern Railway Company—East End Shops’ facility located in Roanoke, Virginia, which have permanently shut down. This action is being taken under the Clean Air Act (CAA).

**DATES:** *Effective Date:* This final rule is effective on October 15, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2008-0333. All documents in the docket are listed in the [www.regulations.gov](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 [www.regulations.gov](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:** Ellen Wentworth, (215) 814-2034, or by e-mail at [wentworth.ellen@epa.gov](mailto:wentworth.ellen@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On May 27, 2008 (73 FR 30340), EPA published a notice of proposed rulemaking (NPR) for the

Commonwealth of Virginia. The NPR proposed approval of the removal of a NO<sub>x</sub> RACT permit from the Virginia SIP for sources located at the Norfolk Southern Railway Company—East End Shops’ facility, in Roanoke, Virginia which have permanently shut down. The formal SIP revision was submitted by the Virginia Department of Environmental Quality (VADEQ) on February 11, 2008.

**II. Summary of SIP Revision**

On February 11, 2008, the Commonwealth of Virginia submitted a revision to its SIP which requested the removal of NO<sub>x</sub> RACT permit No. 20468, issued to the Norfolk Southern Railway Company—East End Shops’ facility in Roanoke, Virginia, from the Virginia SIP. Since the time of EPA’s approval of the NO<sub>x</sub> RACT requirements for NO<sub>x</sub> RACT-subject sources at this facility (70 FR 21621, April 27, 2005), many sources, including those that had previously been subject to the NO<sub>x</sub> RACT requirements of 9 VAC 5-40 via permit No. 20468, were permanently shut down. As a result, the VADEQ requested that EPA remove NO<sub>x</sub> RACT permit No. 20468 from the Virginia SIP since it was no longer applicable. The SIP revision consisted of mutual shut down agreements between the VADEQ and the Norfolk Southern Railway Company—

East End Shops' facility located in Roanoke, Virginia. The volatile organic compound (VOC) and NO<sub>x</sub> RACT control regulations of Chapter 40 had originally become applicable in the Roanoke area because of its participation in the EPA Early Action Compact (EAC) program for the Western Virginia Emissions Control Area.

The sources previously subject to the NO<sub>x</sub> RACT requirements of permit No. 20468 which have permanently shut down include the following units: Unit ID #8-01, B & W Stirling coal-fired spreader stoker boiler; Unit ID #8-02, B & W Stirling coal-fired spreader stoker boiler; Unit ID #8-03, B & W Stirling coal-fired spreader stoker boiler; Unit ID #8-04, Zurn Energy coal-fired spreader stoker boiler; Unit ID #43-03, 15 open-front oil-fired metal heating furnaces; and Unit ID #51-13/14, one 13-ton capacity electric arc furnace.

Other specific requirements of the removal of the NO<sub>x</sub> RACT permit for Norfolk Southern Railway Company—East End Shops' facility, and the rationale for EPA's action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

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

### IV. Final Action

EPA is approving the Commonwealth of Virginia's SIP revision, submitted on February 11, 2008, requesting the removal of NO<sub>x</sub> RACT permit No. 20468, issued on December 22, 2004, to the Norfolk Southern Railway Company—East End Shops' facility, in Roanoke, Virginia from the Virginia SIP. EPA is taking this final action because the sources that were previously subject to the NO<sub>x</sub> RACT requirements of this permit, have permanently shut down. EPA is approving this action with the understanding that no future operation of this equipment shall occur until the owner has obtained the applicable permits pursuant to 9 VAC 5 Chapter 80 of Virginia's regulations. Upon EPA's approval of the Commonwealth's request, the VADEQ will notify the Norfolk Southern Corporation of EPA's approval and the permit repeal will become effective 30 days later.

### 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. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

#### 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 November 14, 2008. 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, pertaining to the

removal of the Norfolk Southern Railway Company—East End Shops' NO<sub>x</sub> RACT permit, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 29, 2008.

Donald S. Welsh,

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

##### § 52.2420 [Amended]

■ 2. In § 52.2420, the table in paragraph (d) is amended by removing the entry for Norfolk Southern Railway Company—East End Shops.

[FR Doc. E8-21309 Filed 9-12-08; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2008-0593-200818a; FRL-8714-7]

#### Approval and Promulgation of Implementation Plans Alabama: Volatile Organic Compounds and Open Burning

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Alabama State Implementation Plan (SIP), submitted by the Alabama Department of Environmental Management (ADEM) on January 8, 2008. The revisions include modifications to Alabama's Volatile Organic Compounds (VOC) and Control of Open Burning and Incineration regulations, found at Alabama Administrative Code (AAC) Chapters 335-3-1, and 335-3-3, respectively. This action is being taken pursuant to section 110 of the Clean Air Act (CAA).

This SIP revision also contains a letter addressing the requirements of section

110(a)(2)(D)(i), which EPA will consider separately.

**DATES:** This direct final rule is effective November 14, 2008 without further notice, unless EPA receives adverse comment by October 15, 2008. 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 No. "EPA-R04-OAR-2008-0593," by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: [harder.stacy@epa.gov](mailto:harder.stacy@epa.gov).

3. *Fax*: 404-562-9019.

4. *Mail*: "EPA-R04-OAR-2008-0593," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier*: Ms. Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

*Instructions:* Direct your comments to Docket ID No. "EPA-R04-OAR-2008-0593," 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*, 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 through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *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*, 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