

Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting Federal requirements and disapproves other state law because it does not meet Federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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.

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

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate

matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 16, 2011.

**James B. Martin,**

*Regional Administrator, Region 8.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2010-0856; FRL-9308-2]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Virginia Department of Environmental Quality (VADEQ). This revision pertains to EPA's proposal to approve the addition of nitrogen oxides (NO<sub>x</sub>) as a precursor to ozone in the Virginia SIP that governs permits for constructing or significantly modifying facilities located in areas attaining the national ambient air quality standards (NAAQS). This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before June 22, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2010-0856 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail:* [cox.kathleen@epa.gov](mailto:cox.kathleen@epa.gov).

C. *Mail:* EPA-R03-OAR-2010-0856, Kathleen Cox, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *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 Docket ID No. EPA-R03-OAR-2010-0856. 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.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 information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://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 <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 <http://www.regulations.gov> index. 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 <http://www.regulations.gov> 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 Virginia submittal are available at the VADEQ Office, 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:** Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On June 7, 2010, the VADEQ submitted a revision to the Virginia SIP for including NO<sub>x</sub> as a precursor to ozone for permits of major stationary

sources or major modifications locating in areas in Virginia that are attaining the NAAQS, also known as Prevention of Significant Deterioration (PSD) areas.

## I. Background

We are proposing approval of Virginia's SIP submission dated June 7, 2010 which addresses regulatory changes needed to be equivalent to the CAA's part C PSD permit program. This SIP submission 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 proposed 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 proposed approval would approve 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.

## II. Summary of SIP Revision

VADEQ's regulations adding NO<sub>x</sub> as a precursor to ozone establish 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.

We are proposing to fully approve the 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. These proposed changes will add 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.

Previously, EPA had issued an "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).

## 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 "regarding 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 to 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.

## IV. Proposed Action

Our review of Virginia's SIP revision request indicates that our proposed approval of this SIP revision is warranted. As previously noted, 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.

This proposed SIP approval for sections 5-80-1615 and 5-80-1695 which addresses regulatory changes needed to be equivalent to the CAA's part C PSD permit program. It will also correct 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 proposed 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 proposed approval would approve 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 proposing to fully approve the Virginia SIP revision request for these changes only. Prior "limited approval" of certain aspects of Virginia's PSD program elements remain valid. A description of these items for "limited approval" 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). EPA is soliciting public comments on the issues discussed for this proposed approval document only. These comments will be considered before taking final action.

#### V. Statutory and Executive Order Reviews

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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 proposed rule to include NO<sub>x</sub> as a precursor to ozone in Virginia 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.

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

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: April 25, 2011.

**James W. Newson,**

*Acting Regional Administrator, Region III.*  
[FR Doc. 2011-12515 Filed 5-20-11; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-0210-0302; FRL-9309-9]

#### Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards; Utah

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

**ACTION:** Proposed Rule.

**SUMMARY:** EPA is proposing to approve and conditionally approve the State Implementation Plan (SIP) submissions from the State of Utah which demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the

National Ambient Air Quality Standard (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a) of the CAA requires that each state adopt and submit an "infrastructure SIP" for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA. The State of Utah submitted two certifications of their Infrastructure SIP for the 1997 ozone NAAQS, one dated December 3, 2007, which was determined to be complete on March 27, 2008 (73 FR 16205), and one dated December 21, 2009. EPA does not propose to act on the State's March 22, 2007 submission to meet the requirements of section 110(a)(2)(D)(i) of the CAA, relating to interstate transport of air pollution, for the 1997 ozone NAAQS. EPA approved the State's interstate transport SIP submission on May 28, 2008 (73 FR 16543).

**DATES:** Written comments must be received on or before June 22, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2010-0302, by one of the following methods:

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

- *E-mail:* [dolan.kathy@epa.gov](mailto:dolan.kathy@epa.gov)
- *Fax:* (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R08-OAR-2010-0302. 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.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 information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The