

closest to the geographic center of each applicable leased tract. Except that, an applicable leased tract will be excluded from this calculation if any portion of the tract is located in a geographic area that was subject to a leasing moratorium on January 1, 2005, unless the leased tract was in production on that date.

**§ 219.417 How will MMS disburse qualified OCS revenues to the coastal political subdivisions if, during any fiscal year, there are no applicable leased tracts in the 181 Area in the Eastern Gulf of Mexico Planning Area?**

If, during any fiscal year, there are no applicable leased tracts in the 181 Area in the Eastern Gulf of Mexico Planning Area, MMS will disburse funds to the coastal political subdivisions in accordance with the following criteria:

(a) Fifty percent of the revenues will be allocated to a Coastal producing State's coastal political subdivisions in the proportion that each coastal political subdivision's population bears to the population of all coastal political subdivisions in the State; and

(b) Fifty percent of the revenues will be allocated to a Coastal producing State's coastal political subdivisions in the proportion that each coastal political subdivision's miles of coastline bears to the number of miles of coastline of all coastal political subdivisions in the State. Except that, for the State of Louisiana, proxy coastline lengths for coastal political subdivisions without a coastline will be considered to be  $\frac{1}{3}$  the average length of the coastline of all political subdivisions within Louisiana having a coastline.

**§ 219.418 When will funds be disbursed to Gulf producing States and eligible coastal political subdivisions?**

The MMS will disburse allocated funds in the fiscal year after MMS collects the qualified OCS revenues. For example, MMS will disburse funds in fiscal year 2010 from the qualified OCS revenues collected during fiscal year 2009.

[FR Doc. E8-11709 Filed 5-23-08; 8:45 am]

BILLING CODE 4310-MR-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R03-OAR-2008-0333; FRL-8571-1]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to the removal of a nitrogen oxide (NO<sub>x</sub>) RACT permit for sources located at the Norfolk Southern Corporation in Roanoke, Virginia, which have permanently shut down. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before June 26, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2008-0333 by one of the following methods:

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

B. *E-mail:* fernandez.cristina@epa.gov.

C. *Mail:* EPA-R03-OAR-2008-0333, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, 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-2008-0333. 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 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:** On February 11, 2008, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to its State Implementation Plan (SIP) pertaining to the removal of a NO<sub>x</sub> RACT permit for sources located at the Norfolk Southern Railway Company, located in Roanoke, Virginia, that had permanently shut down.

**I. Background**

Prior to the final designations of the 8-hour ozone nonattainment area, 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

1-hour ozone standard were eligible to participate. In order to participate, state and local governments and EPA had to develop and sign a memorandum of agreement that described the local control measures the state or local community intended to adopt and implement to reduce emissions of ozone-forming air pollutants. This agreement was known as an Early Action Compact (EAC). Areas that participated in the EAC program had the flexibility to institute their own approach in maintaining clean air and protecting public health.

Several localities in the Winchester and Roanoke, Virginia areas elected to participate in the EAC program. Virginia's strategy for enabling these localities to participate in the EAC program was to have them be subject to volatile organic compound (VOC) and NO<sub>x</sub> control measures from which they had previously been exempt. In order to enable the affected localities to implement VOC and NO<sub>x</sub> controls, the list of VOC and NO<sub>x</sub> emission control areas in 9 VAC 5-20-206, Volatile Organic Compound and Nitrogen Oxide Emission Control Areas, was expanded to include the counties of Botetourt, Frederick, and Roanoke, and the cities of Roanoke, Salem, and Winchester. This area became known as the Western Virginia Emissions Control Area (70 FR 21625, April 27, 2005). As a result, the VOC and NO<sub>x</sub> control regulations of Chapter 40 became applicable in the Roanoke area.

The Norfolk Southern Railway Company rail car and locomotive maintenance facility located in Roanoke, Virginia, was identified as one of the sources located in the Western Virginia Emissions Control Area subject to RACT. Accordingly, the company prepared a RACT analysis to support a RACT determination for the control of NO<sub>x</sub> emissions from the facility. After undergoing public comment, a state operating permit was issued to the source to ensure compliance with the RACT requirements. The permit, No. 20468, was submitted to EPA as a revision to the Commonwealth of Virginia SIP on February 7, 2005. EPA published its approval of the SIP revision on April 27, 2005 (70 FR 21621).

## II. Summary of SIP Revision

On February 11, 2008, the Commonwealth of Virginia submitted a revision to its SIP which consisted of mutual agreements between the VADEQ and the Norfolk Southern Corporation for permanent shut downs of certain NO<sub>x</sub> RACT-subject sources located at the Norfolk Southern Corporation

complex in Roanoke, Virginia. Since the time of EPA's approval of the NO<sub>x</sub> RACT requirements for the Norfolk Southern Railway Company (70 FR 21621, April 27, 2005), many sources at the facility, 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 is requesting that EPA remove RACT permit No. 20468 from the Virginia SIP, since it is no longer applicable. Once EPA has approved this request and VADEQ has notified Norfolk Southern Corporation of its approval, the permit repeal will become effective 30 days later.

The units subject to the NO<sub>x</sub> RACT requirements of permit No. 20468, which have permanently shut down, include the following: 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.

The February 11, 2008 SIP revision consists of signed mutual determination agreements of permanent shut downs between the VADEQ and Norfolk Southern Corporation for the previously identified RACT-subject sources in accordance with the requirements of 9 VAC 5-20-220, and state operating permit regulations 9 VAC 5-80-1210, subsection L. Unit ID #8-01—B&W Stirling coal-fired spreader stoker boiler; Unit ID #8-02—B&W Stirling coal-fired spreader stoker boiler; and Unit ID #8-03—B&W Stirling coal-fired spreader stoker boiler were permanently shut down as per the shut down agreement between VADEQ and Northern Southern Corporation, dated August 20, 2007. 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 #15-13/14—one 13-ton capacity electric arc furnace, were permanently shut down as per the shut down agreement between VADEQ and Northern Southern Corporation, dated June 22, 2005.

## 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 CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

#### IV. Proposed Action

EPA is proposing to approve the Commonwealth of Virginia's SIP revision request, submitted on February 11, 2008, to remove NO<sub>x</sub> RACT permit No. 20468 from the Virginia SIP. The SIP revision consists of mutual agreements between VADEQ and the Norfolk Southern Corporation for permanent shut down of the units described above. EPA is proposing approval of the removal of NO<sub>x</sub> RACT permit No. 20468 from the Virginia SIP 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. Once EPA has approved this request and VADEQ has notified Norfolk Southern Corporation of EPA's approval, the removal of permit No. 20468 from the Virginia SIP will become effective 30 days later. EPA is soliciting public comments on the issues discussed in this document. 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 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 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, pertaining to the removal of a NO<sub>x</sub> RACT permit from the Virginia SIP for sources at the Norfolk Southern Corporation that have permanently shut down, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 14, 2008.

**William T. Wisniewski,**  
Acting Regional Administrator, Region III.  
[FR Doc. E8-11733 Filed 5-23-08; 8:45 am]  
**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2008-0185; FRL-8571-5]

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for the Lawrence County Area

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) submitted a SIP revision consisting of a maintenance plan that provides for continued attainment of the 8-hour ozone national ambient air quality standard (NAAQS) for at least 10 years after the April 30, 2004 designations, as well as a 2002 base-year inventory for the Lawrence County Area. EPA is proposing approval of the maintenance plan and the 2002 base-year inventory in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before June 26, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2008-0185 by one of the following methods:

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

B. *E-mail:* [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. *Mail:* EPA-R03-OAR-2008-0097, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, 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-2008-0185. EPA's policy is that all comments