

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 action 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action 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 December 29,

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 to revise the MVEBs for the Parkersburg 8-hour Ozone Maintenance Plan 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, Volatile organic compounds.

Dated: October 20, 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 XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by revising the entry for the 8-Hour Ozone Maintenance Plan for the Parkersburg-Marietta, WV-OH Area to read as follows:

#### § 52.2520 Identification of plan.

\* \* \* \* \*

(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* * *	* * *	* * *	* * *
8-Hour Ozone Maintenance Plan for the Parkersburg-Marietta, WV-OH Area.	Wood County .....	09/08/06	5/8/07; 72 FR 2967	
		08/25/08	10/30/08; [Insert page number where the document begins].	Reallocation of emissions from the existing "safety margin" to increase the available motor vehicle emission budgets for highway vehicles.
* * *	* * *	* * *	* * *	* * *

\* \* \* \* \*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2007-0382, EPA-R03-OAR-2008-0113; FRL-8735-6]

### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Emission Reductions From Large Stationary Internal Combustion Engines and Large Cement Kilns

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions submitted by the Virginia Department of Environmental Quality (VADEQ). These revisions require nitrogen oxides (NO<sub>x</sub>) emission reductions from four large stationary internal combustion (IC) engines and a large cement kiln located in the Commonwealth of Virginia. The intended effect of this action is to

approve permitted emission limits that enable Virginia to meet its remaining NO<sub>x</sub> reduction obligations under the NO<sub>x</sub> SIP Call.

**DATES:** *Effective Date:* This final rule is effective on December 1, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2007-0382. All documents in the docket are listed in the <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 <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:** Marilyn Powers, (215) 814-2308, or by e-mail at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Background

On August 21, 2008 (73 FR 49373), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of NO<sub>x</sub> emission reductions from four large stationary IC engines and a large cement kiln located in the Commonwealth. The formal SIP revisions were submitted by VADEQ on February 26, 2007, March 5, 2007, March 12, 2007, March 19, 2007, and August 8, 2007. The SIP revision for each source consists of State operating permits that contain emission limits to ensure the Commonwealth meets its NO<sub>x</sub> budget for these sectors as required under the NO<sub>x</sub> SIP Call. Other specific requirements of the State operating permits and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

## II. 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.

## III. Final Action

EPA is approving State operating permits for four Transcontinental Gas Pipeline Stations (Stations 165, 170, 175, and 180) and a State operating permit for Roanoke Cement Corporation as a revision to the Virginia SIP. The NO<sub>x</sub> emission reductions required by the permits address Virginia's remaining emission reduction obligations under the NO<sub>x</sub> SIP Call.

## IV. 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 December 29, 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 EPA approval of NO<sub>x</sub> emission reductions from large stationary IC engines and large cement kilns in Virginia, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

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

Dated: October 20, 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

■ 2. In § 52.2420, the table in paragraph (d) is amended by adding the entries for Transcontinental Pipeline Station 165, Transcontinental Pipeline Station 170, Transcontinental Pipeline Station 175, Transcontinental Pipeline Station 180 and Roanoke Cement Corporation at the end of the table to read as follows:

#### § 52.2420 Identification of plan.

\* \* \* \* \*

(d) \* \* \*

### EPA-APPROVED SOURCE-SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
* * * * *				
Transcontinental Pipeline Station 165.	Registration No. 30864 .....	1/24/07	10/30/08 [Insert page number where the document begins].	
Transcontinental Pipeline Station 170.	Registration No. 30863 .....	1/24/07	10/30/08 [Insert page number where the document begins].	
Transcontinental Pipeline Station 175.	Registration No. 40789 .....	1/30/07	10/30/08 [Insert page number where the document begins].	
Transcontinental Pipeline Station 180.	Registration No. 40782 .....	2/13/07	10/30/08 [Insert page number where the document begins].	
Roanoke Cement Corporation ..	Registration No. 20232 .....	6/18/07	10/30/08 [Insert page number where the document begins].	

\* \* \* \* \*  
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### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Centers for Disease Control and Prevention

#### 42 CFR Part 73

RIN 0920-AA09

#### Possession, Use, and Transfer of Select Agents and Toxins

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Final rule; technical correction.

**SUMMARY:** This document contains a technical correction to the list of select agents and toxins regulated by the U.S. Department of Health and Human Services (HHS), as well as those

biological agents and toxins regulated by both HHS and the U.S. Department of Agriculture (USDA) published on October 16, 2008, in the **Federal Register** (73 FR 61363). This correction inserts "Reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight segments (Reconstructed 1918 Influenza virus)" that was inadvertently omitted from the list of agents and toxins regulated by only HHS.

**DATES:** This correction is effective on November 17, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Robbin Weyant, Director, Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Rd., MS A-46, Atlanta, GA 30333. Telephone: (404) 718-2000.

**SUPPLEMENTARY INFORMATION:** On October 17, 2008, the Centers for Disease Control and Prevention (CDC), HHS published in the **Federal Register** (73 FR 61363) "Possession, Use, and

Transfer of Select Agents and Toxins" which completed the biennial review and republication of the lists of biological agents and toxins regulated by the HHS, as well as those biological agents and toxins regulated by USDA. Reconstructed 1918 Influenza virus (Reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight segments) was inadvertently omitted from the list of agents regulated by HHS. The amendment in this document corrects that omission and does not have a substantive change to the list made final in the October 17, 2008 rule.

#### List of Subjects in 42 CFR Part 73

Biologics, Incorporation by reference, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Transportation.