

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
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Regulation No. 1144 Control of Stationary Generator Emissions				
Section 1.0	General	01/11/06	4/29/08	[Insert page number where the document begins].
Section 2.0	Definitions	01/11/06	4/29/08	[Insert page number where the document begins].
Section 3.0	Emissions	01/11/06	4/29/08	[Insert page number where the document begins].
Section 4.0	Operating Requirements	01/11/06	4/29/08	[Insert page number where the document begins].
Section 5.0	Fuel Requirements	01/11/06	4/29/08	[Insert page number where the document begins].
Section 6.0	Record Keeping and Reporting	01/11/06	4/29/08	[Insert page number where the document begins].
Section 7.0	Emissions Certification, Compliance, and Enforcement	01/11/06	4/29/08	[Insert page number where the document begins].
Section 8.0	Credit for Concurrent Emissions Reductions	01/11/06	4/29/08	[Insert page number where the document begins].
Section 9.0	DVFA Member Companies	01/11/06	4/29/08	[Insert page number where the document begins].

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 [FR Doc. E8-9262 Filed 4-28-08; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2007-1068; FRL-8559-6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Section 110(a)(1) 8-Hour Ozone Maintenance Plan for the White Top Mountain, Smyth County, VA 1-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to a 10-year maintenance plan for the White Top Mountain 1-hour ozone nonattainment area located in Smyth County, Virginia. This action is being taken under the Clean Air Act (CAA).
DATES: *Effective Date:* This final rule is effective on May 29, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2007-1068. 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: Irene Shandruk, (215) 814-2166, or by e-mail at shandruk.irene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 110(a)(1) of the CAA requires that states submit to EPA plans to maintain the NAAQS promulgated by EPA. EPA interprets this provision to require that areas that were maintenance areas for the 1-hour ozone NAAQS, but attainment for the 8-hour ozone NAAQS, submit a plan to demonstrate the continued maintenance of the 8-hour ozone NAAQS.

On May 20, 2005, EPA issued guidance that applies to areas that are designated unclassifiable/attainment for the 8-hour ozone standard. The purpose of this guidance is to address the maintenance requirements in section 110(a)(1) of the CAA, and to assist the States in the development of a SIP. The components from EPA's guidance include: (1) An attainment emissions inventory, which is based on actual "typical summer day" emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) for the 10-year maintenance period, from a base-year chosen by the State; (2) a maintenance demonstration, which demonstrates how the area will remain in compliance with the 8-hour ozone standard for a period of 10 years following the effective date of designation unclassifiable/attainment (June 15,

2004); (3) an ambient air monitoring network, which will be in continuous operation in accordance with 40 CFR part 58 to verify maintenance of the 8-hour ozone standard; (4) a contingency plan, that will ensure that in the event of a violation of the 8-hour ozone NAAQS, measures will be implemented as promptly as possible; (5) a verification of continued attainment, indicating how the State intends on tracking the progress of the maintenance plan.

On February 26, 2008 (73 FR 10201), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of a 10-year maintenance plan for the White Top Mountain 1-hour ozone nonattainment area located in Smyth County, Virginia. The formal SIP revision was submitted by the Commonwealth of Virginia on August 6, 2007.

Other specific requirements of the 10-year maintenance plan under section 110(a)(1) for the White Top Mountain 1-hour ozone nonattainment area located in Smyth County, Virginia 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. Summary of SIP Revision

Virginia has requested approval of a revision consisting of a 10-year maintenance plan under section 110(a)(1) for the White Top Mountain 1-hour ozone nonattainment area located in Smyth County, Virginia. The Virginia Department of Environmental Quality (VADEQ) 8-hour ozone maintenance plan addresses the five components of EPA's May 20, 2005 Guidance, which pertains to the maintenance requirements in section 110(a)(1) of the CAA.

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's review of this revision indicates that the Commonwealth of Virginia has addressed the components of a maintenance plan pursuant to EPA's May 20, 2005 guidance, and meets the requirements of section 110(a)(1) of the CAA. EPA is approving the Virginia SIP revision for White Top Mountain, Smyth County, Virginia, which was submitted on August 6, 2007.

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. 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 June 30, 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 approving Virginia’s SIP revision request consisting of a 10-year maintenance plan under section 110(a)(1) for the White Top Mountain 1-hour ozone nonattainment area located

in Smyth County, 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

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 15, 2008.

William T. Wisniewski,
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 XX—Virginia

■ 2. In § 52.2420, the table in paragraph (e) is amended by adding an entry for the 8-hour Ozone Maintenance plan for the White Top Mountain, Smyth County, VA 1-hour Ozone Nonattainment Area at the end of the table 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
* Ozone Maintenance Plan.	* White Top Mountain, Smyth County, VA 1-hour Ozone Nonattainment Area.	* 8/6/07	* 8/29/08.	*

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2007-1091-200813; FRL-8559-1]

Approval and Promulgation of Implementation Plans Kentucky: Tennessee Valley Authority Paradise Facility State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a source specific State Implementation Plan (SIP) revision submitted on October 19, 2007, by the Commonwealth of Kentucky through the Kentucky Division for Air Quality (KDAQ). This SIP revision supercedes a previous source-specific revision approved by EPA on August 25, 1989, including an equivalency demonstration supporting the redistribution of sulfur dioxide (SO₂) emissions from Tennessee Valley Authority’s (TVA’s) Paradise Steam Plant located in Muhlenberg County, Kentucky. The revision being approved now includes SO₂ limits that are more stringent than the current SIP-approved statewide SO₂ limits for electric generating units (EGUs). Consistent with Kentucky

Administrative Regulations (KAR) approved into the SIP, affected facilities located in Muhlenberg County are subject to an SO₂ emission limit of 3.1 pounds per million British Thermal Units (lbs/mmBTU). The 3.1 lbs/mmBTU limit was approved by EPA on June 24, 1983, as part of Kentucky’s control strategy for attaining and maintaining the primary and secondary SO₂ national ambient air quality standard (NAAQS) in Muhlenberg County. This current SIP action will approve a limit of 1.2 lbs/mmBTU for all three units with limited bypass emissions of 3.1 lbs/mmBTU for scrubber maintenance on Unit 3. This revision was proposed for approval on February 5, 2008, and no adverse comments were received.