

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Amend § 110.195 by revising paragraph (a)(4) to read as follows:

§ 110.195 Mississippi River below Baton Rouge, LA, including South and Southwest Passes.

(a) * * *

(4) *Boothville Anchorage.* An area 5.5 miles in length along the right descending bank of the river extending from mile 13.0 to mile 18.5 above Head of Passes. The width of the anchorage is 750 feet. The inner boundary of the anchorage is a line parallel to the nearest bank 250 feet from the water's edge into the river as measured from the Low Water Reference Plane (LWRP). The outer boundary of the anchorage is a line parallel to the nearest bank 1,000 feet from the water's edge into the river as measured from the LWRP.

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Dated: November 1, 2002.

Roy J. Casto,

Rear Admiral, Coast Guard, Commander, Eighth District Coast Guard.

[FR Doc. 02–28680 Filed 11–8–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[VA127–5059; FRL–7406–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Nitrogen Oxides Budget Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the NO_x Budget Trading Program submitted as a revision to the Virginia State Implementation Plan (SIP), with the exception of its NO_x allowance banking provisions, which EPA proposes to conditionally approve. The revision was submitted in response to EPA's regulation entitled, "Finding of

Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_x SIP Call." The revision establishes and requires a nitrogen oxides (NO_x) allowance trading program for large electric generating and industrial units, beginning in 2004. The intended effect of this action is to propose approval of Virginia's NO_x Budget Trading Program because it substantively addresses the requirements of the NO_x SIP Call, with the following exception: Its NO_x allowance banking provision is proposed to be conditionally approved because it must be revised to require that flow control begin in 2005, in accordance with the revised model rule. EPA is proposing approval of this revision, with the exception noted, in accordance with the requirements of the Clean Air Act.

DATES: Written comments must be received on or before December 12, 2002.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Acting Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available 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 and Virginia Department of Environmental Quality (VADEQ), 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. Please note that any comments on this rule must be submitted in writing, as provided in the ADDRESSES section of this document.

SUPPLEMENTARY INFORMATION: On June 25, 2002, VADEQ submitted a revision to its SIP to address the requirements of the NO_x SIP Call. The revision consists of the adoption of Regulation for Emissions Trading, 9 VAC Chapter 140, part I—NO_x Budget Trading Program. The information in this section of this document is organized as follow:

I. EPA's Action

A. What Action Is EPA Taking in This Proposed Rulemaking?

B. What Are the General NO_x SIP Call Requirements?

C. What Is EPA's NO_x Budget Trading Program?

D. What standards did EPA use to evaluate Virginia's submittal?

II. Virginia's NO_x Budget Trading Program

A. When Did Virginia Submit the SIP Revision to EPA in Response to the NO_x SIP Call?

B. What Is Virginia's NO_x Budget Trading Program?

C. What Is the Result of EPA's Evaluation of Virginia's Program?

III. Proposed Action

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I. EPA's Action

A. *What Action Is EPA Taking in This Proposed Rulemaking?*

EPA is proposing to approve the Virginia NO_x Budget Trading Program submitted as a SIP revision on June 25, 2002, with the exception of its NO_x allowance banking provisions, which EPA proposes to conditionally approve.

B. *What Are the General NO_x SIP Call Requirements?*

On October 27, 1998 (63 FR 57356), EPA published a final rule entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_x SIP Call." The NO_x SIP Call requires the District of Columbia and 22 States, including Virginia, to meet statewide NO_x emission budgets during the May 1 through September 30 ozone season. By meeting these budgets the States will reduce the amount of ground level ozone that is transported across the eastern United States. EPA has previously determined statewide NO_x emission budgets for each affected jurisdiction to be met by the year 2007. EPA identified NO_x emission reductions, by source category, that could be achieved by using cost-effective measures. The source categories included were electric generating units (EGUs), non-electric generating units (non-EGUs), area sources, nonroad mobile sources and highway sources. However, the NO_x SIP Call allowed States the flexibility to decide which source categories to regulate in order to meet the statewide budgets. In the NO_x SIP Call rule's preamble, EPA suggested that imposing statewide NO_x emission caps on large fossil-fuel fired industrial boilers and EGUs would provide a highly cost effective means for States to meet their NO_x budgets. In fact, the State-specific budgets were set assuming an emission rate of 0.15 pounds NO_x per million British thermal units (lbs. NO_x/MMBtu)

at EGUs, multiplied by the projected heat input (MMBtu) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand. See 63 FR 57407, October 27, 1998. The calculation of the 2007 EGU emissions assumed that an emissions trading program would be part of an EGU control program. The NO_x SIP Call State budgets also assumed, on average, a 30 percent NO_x reduction from cement kilns, a 60 percent reduction from industrial boilers and combustion turbines, and a 90 percent reduction from internal combustion engines. The non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 MMBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day.

To assist the States in their efforts to meet the SIP Call, the NO_x SIP Call final rule included a model NO_x allowance trading regulation, called "NO_x Budget Trading Program for State Implementation Plans" (40 CFR part 96), that could be used by States to develop their regulations. The NO_x SIP Call rulemaking explained that if States developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by EPA. See 63 FR 57458–57459, October 27, 1998.

EPA conducted several comment periods on various aspects of the NO_x SIP Call emissions inventories. On March 2, 2000 (65 FR 11222), EPA published additional technical amendments to the NO_x SIP Call. The March 2, 2000 final rulemaking established the inventories upon which Virginia's final budget is based.

A number of parties, including certain States as well as industry and labor groups, challenged the October 27, 1998 (63 FR 57356) NO_x SIP Call Rule. On March 3, 2000, the D.C. Circuit issued its decision on the NO_x SIP Call ruling in favor of EPA on all of the major issues. *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000). However, the Court remanded certain matters for further rulemaking by EPA. EPA recently published a final notice that addresses one of the remanded issues and expects to publish this year another final notice that addresses the remaining remanded issues. Any additional emissions reductions required as a result of the final rulemaking will be reflected in the second phase portion (Phase II) of the NO_x SIP Call rule. Virginia will be required to submit SIP revisions to address Phase II of the NO_x SIP Call Rule.

C. What Is EPA's NO_x Budget Trading Program?

EPA's model NO_x budget and allowance trading rule, 40 CFR part 96, sets forth a NO_x emissions trading program for large EGUs and non-EGUs. A State can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading. The October 27, 1998 final rulemaking contains a full description of the EPA's model NO_x budget trading program. See 63 FR 57514–57538 and 40 CFR part 96. In general, air emissions trading uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a "cap and trade" program.

In a cap and trade program, the State or EPA sets a regulatory limit, or emissions budget, of mass emissions from a specific group of sources. The budget limits the total number of allocated allowances during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the State or EPA then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, e.g., one ton of airborne NO_x. At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner.

D. What Standards Did EPA Use To Evaluate Virginia's Submittal?

The final NO_x SIP Call rule included a model NO_x budget trading program regulation at 40 CFR part 96. EPA used the model rule and 40 CFR 51.121 and 51.122 to evaluate Virginia's NO_x Budget Trading Program.

II. Virginia's NO_x Budget Trading Program

A. When Did Virginia Submit the SIP Revision to EPA in Response to the NO_x SIP Call?

On June 25, 2002, the VADEQ submitted a revision to its SIP to address the requirements of the NO_x SIP Call.

B. What Is Virginia's NO_x Budget Trading Program?

Virginia's SIP revision to address the requirements of the NO_x SIP Call consists of the adoption and submittal of Regulation for Emissions Trading, 9 VAC Chapter 140, part I—NO_x Budget Trading Program.

Regulation for Emissions Trading, 9 VAC Chapter 140, part I—NO_x Budget Trading Program establishes and requires a NO_x allowance trading program for large EGUs and large non-EGUs.

The Virginia NO_x Budget Trading Program regulation which comprises Virginia's SIP revision is as follows:

ARTICLE 1.—NO_x Budget Trading Program General Provisions consists of sections 9 VAC 5–140–10 through 9 VAC 5–140–70;

ARTICLE 2.—Authorized Account Representative for NO_x Budget Sources consists of sections 9 VAC 5–140–100 through 9 VAC 5–140–140;

ARTICLE 3.—Permits consist of sections 9 VAC 5–140–200 through 9 VAC 5–140–250;

ARTICLE 4.—Compliance Certification consists of sections 9 VAC 5–140–300 through 9 VAC 5–140–310;

ARTICLE 5.—NO_x Allowance Allocations consists of sections 9 VAC 5–140–400 through 9 VAC 5–140–430;

ARTICLE 6.—NO_x Allowance Tracking System consists of sections 9 VAC 5–140–500 through 9 VAC 5–140–570;

ARTICLE 7.—NO_x Allowance Transfers consists of sections 9 VAC 5–140–600 through 9 VAC 5–140–620;

ARTICLE 8.—Monitoring and Reporting consists of sections 9 VAC 5–140–700 through 9 VAC 5–140–760;

ARTICLE 9.—Individual Unit Opt-ins consists of sections 9 VAC 5–140–800 through 9 VAC 5–140–880; and

ARTICLE 10.—State Trading Budget and Compliance Supplement Pool consists of sections 9 VAC 5–140–900 through 9 VAC 5–140–930.

Regulation for Emissions Trading, 9 VAC Chapter 140, part I—NO_x Budget Trading Program establishes a NO_x cap and allowance trading program with a budget of 21,195 tons of NO_x for the ozone seasons of 2004 and beyond. The NO_x budgets for large EGUs and large

non-EGUs are 17,091 and 4,104 tons of NO_x per ozone season, respectively. Virginia voluntarily chose to follow EPA's model NO_x budget and allowance trading rule, 40 CFR part 96, that sets forth a NO_x emissions trading program for large EGUs and non-EGUs. Because Virginia's NO_x Budget Trading Program is based upon EPA's model rule, Virginia sources are allowed to participate in the interstate NO_x allowance trading program that EPA will administer for the participating States. Virginia has adopted regulations that are substantively identical to 40 CFR part 96, with one exception: Virginia's regulation at 9 VAC 5-140-550 for banking of NO_x allowances must be revised to require flow control to begin in 2005 in lieu of 2006 as currently required. Thus, EPA proposes approval of Virginia's regulations for its NO_x Budget Trading Program, with the exception of 9 VAC 5-140-550, which EPA proposes to conditionally approve.

Under the NO_x Budget Trading Program, Virginia allocates NO_x allowances to the EGUs and non-EGUs that are affected by these requirements. The NO_x trading program generally applies to fossil-fuel-fired EGUs with a nameplate capacity greater than 25 MW that sell any amount of electricity as well as to non-EGUs that have a heat input capacity greater than 250 MMBtu per hour. Each NO_x allowance permits a unit to emit one ton of NO_x during the seasonal control period. NO_x allowances may be bought or sold. Unused NO_x allowances may also be banked for future use, with certain limitations. Owners will monitor their unit's NO_x emissions by using systems that meet the requirements of 40 CFR part 75, subpart H and will report resulting data to EPA electronically. Each budget unit complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a unit holds, it cannot emit at levels that would violate other Federal or State limits, for example, reasonably available control technology (RACT), new source performance standards, or title IV (the Federal Acid Rain program).

C. What Is the Result of EPA's Evaluation of Virginia's Program?

EPA has evaluated Virginia's June 25, 2002 SIP submittal and has found that the Virginia NO_x Budget Trading Program is consistent with EPA's guidance and addresses the requirements of the NO_x SIP Call, with one exception: Virginia's regulation at 9

VAC 5-140-550 for banking of NO_x allowances requires flow control to begin in 2006. The 2006 date is inconsistent with the model rule in part 96 (which required flow control in the NO_x SIP Call to start in 2004) and the subsequent timing change effected by the ruling of the U.S. Court of Appeals for the D.C. related to its decision in *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000). Although the court's action affected only the compliance deadline, other dates in the rule for related requirements (such as flow control) were also extended because they were established relative to the original compliance deadline. The compliance deadline was extended by 1 year (from 2003 to 2004), thereby necessitating an extension of the date for flow control to begin by 1 year (from 2004 to 2005). Virginia must revise its regulation at 9 VAC 5-140-550 to establish the start of flow control to be 2005. Thus, EPA proposes approval of Virginia's regulations for its NO_x Budget Trading Program, with the exception of 9 VAC 5-140-550, which EPA proposes to conditionally approve. The June 25, 2002 submittal will strengthen Virginia's SIP for reducing ground level ozone by providing NO_x reductions beginning in 2004.

Virginia's SIP revision does not establish requirements for cement manufacturing kilns and stationary internal combustion engines. Virginia will be required to submit SIP revisions to address any additional emission reductions required to meet the State's overall emissions budget. In addition, Virginia's submittal does not rely on any additional reductions beyond the anticipated Federal measures in the mobile and area source categories.

On December 26, 2000 (65 FR 81366), EPA made a finding that Virginia had failed to submit a SIP response to the NO_x SIP Call, thus starting 18 and 24 month clocks for the mandatory imposition of sanctions and the obligation for EPA to promulgate a Federal Implementation Plan (FIP) within 24 months. The effective date of that finding was January 25, 2001. On June 25, 2002, Virginia submitted a SIP revision to satisfy the NO_x SIP Call. On July 16, 2002, EPA found Virginia's SIP submission to be complete. On July 23, 2002, EPA published a notice halting the sanctions clocks for the Commonwealth of Virginia. Upon approval of this SIP revision, with the exception noted, the EPA's FIP obligation is terminated.

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, 1997, 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, 1997 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 Clean Air Act, including, for example, section 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. Proposed Action

EPA is proposing to approve Virginia's Regulation for Emissions Trading, 9 VAC Chapter 140, part I—NO_x Budget Trading Program submitted as a SIP revision on June 25, 2002, with the following exception: Virginia's NO_x allowance banking requirement for flow control is proposed to be conditionally approved. EPA proposes approval for Virginia's NO_x Budget Trading Program because it substantively satisfies the requirements of the NO_x SIP Call. For Virginia's NO_x banking requirements to become fully approvable, Virginia must correct the deficiency identified in this action and submit the change as a SIP revision, by a date within one year from the final conditional approval, after which EPA will conduct rulemaking to fully approve the revision. If the condition is not met within the specified timeframe, EPA is proposing that the rulemaking will convert to a final disapproval.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May

22, 2001)). This action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting

errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This proposed rule that pertains to Virginia's NO_x Budget Trading Program does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: October 31, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02-28695 Filed 11-8-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[PA181-4181b; FRL-7399-3]

Approval and Promulgation of Air Quality Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Pennsylvania; Redesignation of the Allegheny County Carbon Monoxide Nonattainment Area and Approval of Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of redesignating the Pittsburgh area carbon monoxide (CO) nonattainment area to attainment, establish a maintenance plan for the area, and approve the 1990 base year inventory for CO for the area. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final