

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[VA122 & 124-5055; FLR-6919]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Source-Specific Permits to Reduce NO_x Emissions in the Metropolitan Washington, DC Ozone Nonattainment Area**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is approving two State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. The intended effect of this action is to approve permits issued by the Commonwealth of Virginia for the Potomac Electric Power Company (PEPCO), Potomac River Generating Station and the Virginia Power (VP), Possum Point Generating Station. These permits were submitted as State Implementation Plan (SIP) revisions on September 19, 2000, September 26, 2000, and October 24, 2000, by the Virginia Department of Environmental Quality (VADEQ). These permits impose conditions which reduce nitrogen oxides (NO_x) emissions from these two facilities during the ozone season (May 1–September 30) of each year. The resulting NO_x emission reductions are strengthening measures for the Metropolitan Washington, DC ozone nonattainment area's attainment plan and are necessary for full approval of the attainment demonstration SIP for this ozone nonattainment area.

EFFECTIVE DATE: This final rule is effective on January 16, 2001.

ADDRESSES: 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 the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Michael Ioff at (215) 814-2166 or by e-mail at ioff.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On October 19, 2000 (65 FR 62666), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed to approve, as revisions to the Virginia SIP, two permits issued by the

Commonwealth. One permit was issued for PEPCO's Potomac River Generating Station and the other for VP's Possum Point Generating Station. That NPR provided for a public comment period ending on November 9, 2000. On November 9, 2000 (65 FR 67319), EPA published a notice extending the comment period to November 20, 2000. The requirements of the permits and EPA's rationale for approving them as SIP revisions were provided in the NPR and will not be restated here. EPA received no comments on its proposed action to approve these permits.

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, 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.

II. Final Action

EPA is approving permits issued by the Commonwealth of Virginia to PEPCO's Potomac River Generating Station and to VP's Possum Point Generating Station as revisions to the Virginia SIP. EPA is amending the chart found at 40 CFR section 52.2420(d) to reflect its approval action.

III. Administrative Requirements**A. General Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the

Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not 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 approves 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 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 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 takings 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 rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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 exempts from section 801 the following types of rules: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) 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). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

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 February 12, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 approve two permits issued by the Commonwealth of Virginia to PEPCO's Potomac River Generating Station and to VP's Possum Point Generating Station 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: December 1, 2000.

Bradley M. Campbell,
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 VV—Virginia

1. In § 52.2420, the table in paragraph (d) is amended by adding the entries for "Potomac Electric Power Company (PEPCO)—Potomac River Generating Station (Permit to Operate)" and "Virginia Power (VP)—Possum Point Generating Station (Permit to Operate)" at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED VIRGINIA SOURCE-SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
* * *	* * *	* * *	* * *	* * *
Potomac Electric Power Company (PEPCO)—Potomac River Generating Station (Permit to Operate).	Registration No. 70228.	9/18/00	12/14/00	52.2420(d).
Virginia Power (VP)—Possum Point Generating Station (Permit to Operate).	Registration No. 70225.	9/26/00	12/14/00	52.2420(d).

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 70**

[VI002; FRL-6916-9]

Clean Air Act Final Full Approval of Operating Permits Program: The U.S. Virgin Islands**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final full approval.

SUMMARY: The EPA is promulgating full approval of the operating permits program submitted by the U.S. Virgin Islands for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: This program will be effective January 16, 2001.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final full approval as well as the Technical Support Document are available for inspection during normal business hours at the following locations:

EPA Region II, 290 Broadway, 25th Floor, New York, New York 10007-1866, Attention: Steven C. Riva.

EPA Region II, Caribbean Field Office, Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, Stop 22, San Juan, Puerto Rico 00907-4127, Attention: John Aponte.

The U. S. Virgin Islands Department of Planning and Natural Resources (VIDPNR), Division of Environmental Protection, Building 111, Apartment 14A, Water Gut Homes, Christained, St. Croix, U.S. Virgin Islands 00820. Attention: Hollis Griffin.

FOR FURTHER INFORMATION CONTACT: Umesh Dholakia, Permitting Section, at the above EPA office in New York or at telephone number (212) 637-4023. John Aponte of the Caribbean Environmental Protection Division can be reached at (787) 729-6951, extension 279.

SUPPLEMENTARY INFORMATION:**I. Background and Purpose**

Title V of the Clean Air Act ("the Act"), 42 U.S.C. 7661-7661(f), and its implementing regulations at 40 Code of Federal Regulations (CFR) part 70 required that States develop and submit operating permit programs to the EPA by November 15, 1993, and that the EPA

act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act, 42 U.S.C. 7502 and 40 CFR part 70, which together outline criteria for approval or disapproval. If a state did not have an approved program by two years after the November 15, 1993 date, EPA was required to establish and implement a Federal program.

On January 25, 1996, the EPA proposed full approval of the Operating Permits Program submitted for the Virgin Islands (see 61 FR 2216) requiring that the VIDPNR correct the wording errors in its legislation before full approval could be finalized. No comment was received on the proposed full approval document. Because the wording errors were not corrected, EPA subsequently issued a Final Interim Approval on July 31, 1996, rather than a full approval. EPA also reiterated the requirements for a full final approval (see 61 FR 39882). Since all the defects in the Virgin Island's program have been corrected, the EPA is taking the direct final action in this notice to promulgate full approval of the Operating Permits Program for the Virgin Islands.

II. Final Action and Implications*A. Analysis of State Submission*

On January 25, 1996, the EPA proposed full approval of VIDPNR's Title V Operating Permits Program (see 61 FR 2216). The proposed full approval required that the VIDPNR correct the wording errors in its legislation prior to receiving final approval. On July 31, 1996 the Virgin Islands was given interim approval because it had not corrected the wording errors in its legislation (see 61 FR 39882). The Virgin Islands has corrected those errors in legislative changes promulgated on December 22, 1999. These changes were signed by the Governor at Act No. 6338 on January 3, 2000. The program elements discussed in the proposal document are unchanged from the analysis in the Final Full Approval document and continue to fully meet the requirements of 40 CFR part 70.

B. Options for Approval/Disapproval

The EPA is promulgating full approval of the Operating Permits Program submitted to the EPA by the VIDPNR on November 18, 1993 with supplemental packages through August 25, 2000. Among other things, the VIDPNR has demonstrated that the program will be adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5), 42 U.S.C. 7412(l)(5), requirements for approval of a program for delegation of section 112 standards as promulgated by the EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, an expeditious compliance schedule, and adequate enforcement ability, which are also requirements under part 70. In a letter dated May 30, 1995, VIDPNR requested delegation through 112(l) of all existing 112 standards and all future 112 standards for both part 70 and non-part 70 sources and infrastructure programs. In the letter, VIDPNR demonstrated that they have sufficient legal authorities, adequate resources, the capability for automatic delegation of future standards, and adequate enforcement ability for implementation of section 112 of the Act for both part 70 sources and non-part 70 sources. Therefore, the EPA is also promulgating full approval under section 112(l)(5), 42 U.S.C. 7412(1)950, and 40 CFR 63.91 to the Virgin Islands for its program mechanism for receiving delegation of all existing and future section 112(d) standards for both part 70 and non-part 70 sources, and section 112 infrastructure programs that are unchanged from Federal rules as promulgated.

III. Administrative Requirements*A. Docket*

Copies of the State's submittal and other information relied upon for the final full approval are contained in the docket maintained at the EPA Regional Offices in New York and Puerto Rico and at VIDPNR. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final full approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

C. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has