

## Background

On February 7, 2002, the Secretaries published a final rule (67 FR 5890) to establish regulations for seasons, harvest limits, and methods and means related to taking of fish and shellfish for subsistence uses during the 2002 regulatory year. These regulations are subject to an annual review cycle, so the regulations set forth in the February 7, 2002, final rule are effective March 1, 2002, through February 28, 2003. Among many other changes, the February 7, 2002, final rule included changes to the regulations governing subsistence fishing and shellfishing in the Prince William Sound Fishery Management Area. In making revisions to the Prince William Sound regulations, we inadvertently omitted a previously established requirement.

Prior to publication of the February 7, 2002, final rule (67 FR 5890, 5903), the text in 36 CFR 242 (i)(11)(xii) and (xiii) and 50 CFR 100 (i)(11)(xii) and (xiii) read as follows:

(xii) Except as provided in this section, you may take fish other than salmon and freshwater fish species for subsistence purposes without a subsistence fishing permit.

(xiii) You may take salmon and freshwater fish species only under authority of a subsistence fishing permit.

In publishing the February 7, 2002, final rule, the words “and freshwater fish species” were inadvertently removed from the subparagraphs stated above. Through this final rule correction, we are simply correcting the text in 36 CFR 242 (i)(11)(xii) and (xiii) and 50 CFR 100 (i)(11)(xii) and (xiii) to read as it did prior to publication of the February 7, 2002, final rule. Therefore, we are reinstating the permit requirement for freshwater fish in the Prince William Sound Fishery Management Area that was removed in error by the February 7, 2002, final rule.

We are making no further changes to the February 7, 2002, final rule. The basis and required determinations for that rule are the same as for this final rule, which simply corrects an error in the February 7, 2002, rule.

Accordingly, make the following corrections to FR Doc. 02-1919 published at 67 FR 5890 on February 7, 2002:

## PART \_\_\_\_—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA— [CORRECTED]

### § \_\_\_\_ .27 [Corrected]

1. On page 5903, in column 1, in 36 CFR part 242 and 50 CFR part 100,

§ \_\_\_\_ .27(i)(11)(xii) and (i)(11)(xiii) are corrected to read as follows:

### § \_\_\_\_ .27 Subsistence taking of fish.

\* \* \* \* \*

(i) \* \* \*

(11) \* \* \*

(xii) Except as provided in this section, you may take fish other than salmon and freshwater fish species for subsistence purposes without a subsistence fishing permit.

(xiii) You may take salmon and freshwater fish species only under authority of a subsistence fishing permit.

\* \* \* \* \*

Dated: May 3, 2002.

**Kenneth E. Thompson,**

*Subsistence Program Coordinator, USDA—  
Forest Service.*

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MD132 & 133-3087a; FRL-7210-1]

### Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Revised Definitions and Recordkeeping Provisions

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on revisions to the Maryland State Implementation Plan (SIP) submitted by the Maryland Department of Environment (MDE). The revisions adopt by reference the EPA definition of volatile organic compounds (VOC), update the Federal citation of the prevention of significant deterioration (PSD) requirements references in Maryland's definitions and general emission standards provisions, and revise the general records and information requirements for installations and sources. EPA is approving these revisions to the State of Maryland's SIP in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on July 29, 2002 without further notice, unless EPA receives adverse written comment by June 27, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, 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; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

### FOR FURTHER INFORMATION CONTACT:

Harold A. Frankford at (215) 814-2108, or by e-mail at [frankford.harold@epa.gov](mailto:frankford.harold@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Summary of SIP Revisions

On December 11, 2001, the State of Maryland submitted two separate formal revisions to its SIP. One SIP revision consists of (1) a revised reference to the Federal definition of VOC at 40 CFR 51.100(s) which is found in Maryland's definition for “volatile organic compounds (VOC)” (COMAR 26.11.01.01B(53)); and (2) revised references to the Federal PSD regulations at 40 CFR 52.21 found in both Maryland's definition of “prevention of significant deterioration (PSD) source” (COMAR 26.11.01.01B(37)) and the general regulation governing control of PSD sources (COMAR 26.11.06.14). These regulatory revisions became effective on December 10, 2001. The other SIP revision expands and clarifies the type of records and information which Maryland may require from installations and sources governs by its air pollution control regulations (COMAR 26.11.01.05). The revisions to this regulation became effective on June 30, 1997, and a subsequent clarifying amendment became effective on December 10, 2001. Maryland certified that public hearings on the revised regulations to COMAR 26.11.01.01B and 26.11.06.14 were held on October 23, 2001. Maryland also certified that public hearings were held on March 26 and March 28, 1997 on the first revision to COMAR 26.11.01.05, and additional hearings were held on October 23, 2001 on the second revision to COMAR 26.11.01.05. Maryland held these hearings in accordance with the requirements of 40 CFR 51.102.

## II. Evaluation of SIP Revisions

### A. Revisions to Reference Updates to VOC and PSD

Maryland has amended COMAR 26.11.01.01B(53) to update the Federal reference for incorporation of the EPA definition of VOC found at 40 CFR 51.100(s) from the 1999 edition (the currently SIP-approved version) to the 2000 edition of the Code of Federal Regulations (CFR). The amendment ensures that Maryland's definition of the term is identical to the Federal definition. EPA defines VOCs as any organic compound that contributes to ground-level ozone formation and lists as exclusions the compounds that have negligible photochemical reactivity. As EPA completes its reactivity testing, the list of exempt compounds expands. Since Maryland accepts the EPA test results on VOC exempt compounds, it is appropriate for Maryland to adopt the Federal definition of VOC as it appears in 40 CFR 51.100(s) as of a specified date. The 2000 edition of 40 CFR 51.100(s) does not add any new solvents, refrigerants or other compounds to the list of exempt VOCs.

The amendments to COMAR 26.11.01.01B(37) and COMAR 26.11.06.14 update the reference for incorporation of the Federal PSD regulations found at 40 CFR 52.21 from the 1999 edition to the 2000 edition. This edition of 40 CFR 52.21 does not add, amend, or remove any provisions when compared to the 1999 edition of 40 CFR 52.21. Therefore, EPA approves these 40 CFR cross-reference updates found in the definition of VOC at COMAR 26.11.01.01B(53) and the PSD provisions found at COMAR 26.11.01.01B(37) and 26.11.06.14.

### B. Revisions to COMAR 26.11.01.05 (Records and Information)

Maryland has extensively revised the provisions of this regulation when compared to the SIP-approved version. Maryland's revised regulation expands the scope of entities which the State may require to establish and maintain records, in a format approved by the Maryland Department of the Environment (MDE), sufficient to provide the information, such as material and fuel use, necessary to:

(1) Assist the MDE in the development of an implementation plan, air emissions standard, equipment performance standard, or material formulation standard;

(2) Determine compliance with an air emissions standard, equipment performance standard, material formulation standard, or permit condition;

(3) Verify or update registration information; or

(4) Update Maryland's air emissions inventory.

Under the revised provision, the State can require a person who owns or operates such installation or source, upon request, to supply the requested information to the MDE, summarizing the information in a format approved by the MDE and on a schedule specified by the MDE. The current SIP provision applies only to fuel suppliers.

Maryland's 1998 and 2001 amendments have expanded the scope of this rule to include a person who owns or operates an installation or source, as defined in COMAR 26.11.01.01B(19) and 26.11.01.01B(43) respectively. Both of these definitions are included in the current Maryland SIP. In its support document accompanying this SIP revision which provided justification for the amended provisions, Maryland stated that this amendment is intended to require owners and operators of applicable sources, when requested, to establish and maintain records as well as provide information to the Maryland Department of the Environment (MDE) on operating data, materials consumption, materials formulation, and similar information necessary to quantify air emissions and determine compliance. According to the State, most major facilities have specific record keeping requirements established in a source-specific regulation or by a permit condition. Maryland concludes that there would be little or no economic impact from the revised provisions because entities subject to this rule already maintain information such as fuel use, equipment use, and production rates as part of their normal business practice.

EPA has reviewed the revisions to COMAR 26.11.01.05 and has determined that the revised provisions are consistent with the requirements of 40 CFR part 51, subpart K (Source surveillance), particularly the requirements for determining compliance with the applicable rules and regulations (40 CFR 51.210) and for requiring owners or operators of stationary sources to maintain records and periodically report to the State such information which will enable the State to determine compliance with applicable portions of the control strategy (40 CFR 51.211). In addition, EPA has determined that the revised provisions would enhance Maryland's ability to comply, as needed, with the requirements of 40 CFR part 51, subpart G (Control strategy), particularly sections 51.114 (Emissions data and projections), and 51.116 (data

availability). At the same time, EPA agrees with Maryland's assertion that having installations and sources provide such information presents no undue burden since such information is maintained during the course of normal business practice, or is already required by a source-specific regulation or by a permit condition. Therefore, EPA approves the revised version of COMAR 26.11.01.05 as a revision to the Maryland SIP.

## III. Final Action

EPA is approving revisions to the Maryland SIP that update the references to the EPA definition of VOC found at 40 CFR 51.100(s) (COMAR 26.11.01.01B(53)), and the Federal PSD regulations at 40 CFR 52.21 (COMAR 26.11.01.01B(37) and 26.11.06.14). EPA is also approving as a revision to the Maryland SIP the State's revised general records and information requirements for installations and sources (COMAR 26.11.01.05). EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment since the revisions are administrative changes to the state regulations. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 29, 2002 without further notice unless EPA receives adverse comment by June 27, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## IV. 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. 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 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). This rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does 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). This action 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 “Protection of Children from Environmental Health Risks and Safety Risks” (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. 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. EPA will submit a report containing this rule 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**. This rule 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 July 29, 2002. 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 Maryland’s revised definition of VOC, revised PSD requirements, and the revised general records and information requirements for installations and sources 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 1, 2002.

**Thomas Voltaggio,**

*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 V—Maryland**

2. Section 52.1070 is amended by adding paragraphs (c)(171) and (c)(172) to read as follows:

#### **§ 52.1070 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*  
(171) Revisions to the Code of Maryland Administrative Regulations (COMAR) which update the Maryland regulation references to both the Federal Prevention of Significant Deterioration (PSD) regulations found at § 52.21 and the EPA definition of “volatile organic compound” (VOC) found at 40 CFR 51.100(s) of the 2000 edition of the Code of Federal Regulations, submitted on December 11, 2001 by the Maryland Department of the Environment:

(i) *Incorporation by reference.*

(A) Letter of December 11, 2001 from the Maryland Department of the Environment transmitting updated references to the Code of Federal Regulations (CFR) with regard to the Prevention of Significant Deterioration (PSD) regulations and the definition of “volatile organic compound” (VOC).

(B) Revisions to COMAR 26.11.01.01B(37) and COMAR 26.11.06.14 effective December 10, 2001, which updates the references for incorporation of the Federal PSD regulations found at § 52.21 from the 1999 to the 2000 edition of the CFR.

(C) The revision to COMAR 26.11.01.01B(53) effective December 10, 2001, which updates the references of the EPA definition of VOC found at 40 CFR 51.100(s) from the 1999 edition to the 2000 edition of CFR.

(ii) *Additional material.* Remainder of the State submittals pertaining to the revisions listed in paragraphs (c)(171)(i)(B) and (C) of this section.

(172) Revision to the Code of Maryland Administrative Regulations (COMAR) governing general records and information requirements, submitted on December 11, 2001 by the Maryland Department of the Environment:

(i) *Incorporation by reference.*

(A) Letter of December 11, 2001 from the Maryland Department of the Environment transmitting revisions to COMAR 26.11.01.05 (Records and Information).

(B) Revised COMAR 26.11.01.05, effective June 30, 1997, replacing COMAR 26.11.01.05, effective July 18, 1980, as recodified August 1, 1988.

(C) Revision to the introductory paragraph of COMAR 26.11.01.05A., effective December 10, 2001.

(ii) *Additional material.* Remainder of the State submittals pertaining to the

revisions listed in paragraphs (c)(172)(i)(B) and (C) of this section.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 268

[FRL-7217-4]

#### Land Disposal Restrictions: Site-Specific Treatment Variance to Chemical Waste Management, Inc.

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The United States Environmental Protection Agency (EPA or Agency) is today taking direct final action by granting a site-specific treatment variance from the Land Disposal Restrictions (LDR) treatment standards for two selenium-bearing hazardous wastes. EPA first granted a variance for these two waste streams three years ago. We are now taking action to extend the variance because: the chemical properties of these two wastes continue to differ significantly from the waste used to establish the current LDR standard for selenium (5.7 mg/L, as measured by the TCLP); and Chemical Waste Management, Inc. (CWM) has adequately demonstrated that the two wastes cannot be treated with current technologies to meet this treatment standard.

CWM will stabilize these two specific wastes at their Kettleman City, California facility to meet the following alternative treatment standards: 51 mg/L, as measured by the TCLP, for the Owens-Brockway waste and 25 mg/L, as measured by the TCLP, for the St. Gobain (formerly Ball Foster) waste. After treatment to these alternative selenium standards, CWM may dispose of the treated wastes in a RCRA Subtitle C landfill provided they meet the applicable LDR treatment standards for the other hazardous constituents in the wastes. We are granting this variance for three years.

**DATES:** This rule is effective on July 12, 2002, without further notice, unless EPA receives adverse comment on the direct final rule by June 27, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** The official record for this rulemaking is identified as Docket Number F-2002-CWVF-FFFFF and is

located in the RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. The RIC is open from 9 am to 4 pm Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling 703-603-9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost \$0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information, call the RCRA Call Center at 1-800-424-9346 or TDD 1-800-553-7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703-412-9810 or TDD 703-412-3323 (hearing impaired). The RCRA Call Center is open Monday-Friday, 9 am to 4 pm, Eastern Standard Time. For more information on specific aspects of this direct final rule, contact Josh Lewis at 703-308-7877, [lewis.josh@epa.gov](mailto:lewis.josh@epa.gov), or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** EPA is publishing this rule without prior proposal because we view it as a noncontroversial action. We anticipate no significant adverse comment because of the site-specific nature of this action and because we are merely extending a variance that is already in effect, and which has already been the subject of notice and opportunity for comment. In the three years since we granted the original variance, no new treatment options have become available to treat these two waste streams more effectively. Having said this, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to grant this variance if significant adverse comments are filed. See the proposed rule for information on submitting comments.

This direct final rule will be effective on July 12, 2002, without further notice unless we receive adverse comment by June 27, 2002. If we receive significant adverse comment, we will publish a timely withdrawal in the **Federal Register** indicating that this direct final rule action is being withdrawn due to adverse comment on the proposed rule. We will then address all public comments, as appropriate, based on the proposed rule. Any parties interested in commenting on this treatment variance must do so at this time.

## Availability of Rule on Internet

Please follow these instructions to access the rule: From the World Wide Web (WWW), type <http://www.epa.gov/epaoswer/hazwaste/ldr>.

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## I. Background

### A. What Is the Basis for LDR Treatment Variances?

Under section 3004(m) of the Resource Conservation and Recovery Act (RCRA), EPA is required to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." EPA interprets this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was upheld by the D.C. Circuit in *Hazardous Waste Treatment Council vs. EPA*, 886 F.2d 355 (D.C. Cir. 1989).

The Agency recognizes that there may be wastes that cannot be treated to levels specified in the regulations (see 40 CFR 268.40) because an individual waste matrix or concentration can be