

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<sub>x</sub> Budget Trading Program submitted as a SIP revision on June 25, 2002, with the following exception: Virginia's NO<sub>x</sub> allowance banking requirement for flow control is proposed to be conditionally approved. EPA proposes approval for Virginia's NO<sub>x</sub> Budget Trading Program because it substantively satisfies the requirements of the NO<sub>x</sub> SIP Call. For Virginia's NO<sub>x</sub> 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<sub>x</sub> 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

rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by December 12, 2002.

**ADDRESSES:** Written comments should be mailed to David L. Arnold, 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; the Air and Radiation Docket and Information Center, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Catherine L. Magliocchetti, (215) 814-2174, or by e-mail at [magliocchetti.catherine@epa.gov](mailto:magliocchetti.catherine@epa.gov).

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this redesignation request, maintenance plan and emissions inventory for the CO nonattainment area in southwestern Pennsylvania, 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.

Dated: October 17, 2002.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*  
[FR Doc. 02-28496 Filed 11-8-02; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 61

[FRL-7405-5]

RIN 2060-AJ87

### National Emission Standard for Benzene Waste Operations

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

**ACTION:** Proposed rule; amendments.

**SUMMARY:** We are proposing to amend the national emission standards for hazardous air pollutants (NESHAP) for benzene waste operations, promulgated on March 7, 1990 (55 FR 8346), under the authority of section 112 of the Clean Air Act (CAA). The amendments add an exemption for organic vapors routed to the fuel gas system and a new compliance option for tanks, and clarify the standards for containers.

In the Rules and Regulations section of this **Federal Register**, we are taking direct final action on the proposed amendments because we view this action as noncontroversial, and anticipate no adverse comment. We have explained our reasons for the amendments in the preamble to the direct final rule.

If we receive no adverse comment, we will take no further action on the proposed amendments. If we receive adverse comment, we will withdraw the direct final amendments and they will not take effect.

**DATES:** *Comments.* We must receive comments by December 12, 2002, unless a hearing is requested by November 22, 2002.

*Public Hearing.* If anyone contacts us requesting to speak at a public hearing by November 22, 2002, a public hearing will be held on November 27, 2002.

**ADDRESSES:** *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket No. A-2001-23, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket No. A-2001-23, Room B-108, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. We request a separate copy of each public comment be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

*Public Hearing.* If a public hearing is held, it will begin at 10 a.m. and will be held at the U.S. EPA new facility

complex in Research Triangle Park, North Carolina, or an alternative site nearby. You should contact Ms. JoLynn Collins, U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541-5671 to request a public hearing, to request to speak at a public hearing, or to find out if a hearing will be held.

*Docket.* Docket No. A-2001-23 contains supporting information used in developing the proposed amendments. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460 in room B-108, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert B. Lucas, Waste and Chemical Process Group, Emission Standards Division (C439-03), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541-0884, electronic mail (e-mail), [lucas.bob@epa.gov](mailto:lucas.bob@epa.gov).

**SUPPLEMENTARY INFORMATION:** For information concerning applicability and rule determinations, contact the appropriate regional representative:

- U.S. EPA New England, Director, Air Compliance Programs, 1 Congress Street, Suite 1100 (SEA), Boston, MA 02114-2023. Phone contact: (617) 918-1656. FAX: (617) 918-1112.
- U.S. EPA—Region II, Air Compliance Branch, 290 Broadway, New York, NY 10007-1866. Phone (212) 637-3000. FAX: (212) 637-3526.
- U.S. EPA—Region III, Chief, Air Enforcement Branch (3AP12), 1650 Arch Street, Philadelphia, PA 19103-2029. Phone: (215) 814-3438. FAX: (215) 814-2134. Region III Office Website: [www.epa.gov/reg3artd/hazpollut/hazairpol.htm](http://www.epa.gov/reg3artd/hazpollut/hazairpol.htm).
- U.S. EPA—Region IV, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303-3104. Phone: (404) 562-9105. FAX: (404) 562-9095.
- U.S. EPA—Region V, Air Enforcement and Compliance Assurance Branch (AE17J), 77 West Jackson Boulevard, Chicago, IL 60604-3590. Phone: (312) 353-2088. FAX: (312) 353-8289.
- U.S. EPA—Region VI, Chief, Toxics Enforcement Section (EN-AT), 1445 Ross Avenue, Dallas, TX 75202-2733. Phone: (214) 665-7224. FAX: (214) 665-2146. Region VI Office Website: [www.epa.gov/region6](http://www.epa.gov/region6).
- Region VII, Bill Peterson, U.S. EPA, 726 Minnesota Avenue, Kansas City, KS 66101. Phone: (913) 551-7881. FAX: (913) 551-7467.
- U.S. EPA—Region VIII, MACT Enforcement, 999 18th Street, Suite