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This deviation from the operating regulations is authorized under 33 CFR 117.43.

Dated: October 25, 2005.

**Gary Kassof,**

*Bridge Program Manager, First Coast Guard District.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R03-OAR-2005-PA-0002; FRL-7992-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO<sub>x</sub> RACT Determinations for Three Individual Sources

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania State Implementation Plan (SIP). The revisions were

submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for three major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) pursuant to the Commonwealth of Pennsylvania's (Pennsylvania's) or the Commonwealth's SIP-approved generic RACT regulations. EPA is approving these revisions in accordance with the Clean Air Act (CAA).

**DATES:** This rule is effective on December 2, 2005.

**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) ID Number R03-OAR-2005-PA-0002. All documents in the docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Once in the system, select "quick search," then key in the appropriate RME identification number. 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 in RME 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 Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Amy Caprio, (215) 814-2156, or by e-mail at [caprio.amy@epa.gov](mailto:caprio.amy@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On August 30, 2004, PADEP submitted a formal SIP revision that consists of source-specific operating permits and/or plan approvals issued by PADEP to establish and require RACT pursuant to the Commonwealth's SIP-approved generic RACT regulations. On April 4, 2005 (70 FR 16955), EPA published a direct final rule (DFR) approving revisions to PADEP-issued operating permits which establish and require RACT for three individual sources. The following table identifies the sources and the individual plan approvals (PAs) and operating permits (OPs) which are the subject of this rulemaking.

#### PENNSYLVANIA—VOC AND NO<sub>x</sub> RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source's name	County	Plan Approval (PA #) Operating Permit (OP #)	Source type	"Major source" pollutant
Waste Management Disposal Services of Pennsylvania, Inc. (Pottstown Landfill).	Berks; Montgomery ...	OP-46-0033	Turbines; Enclosed Flares .....	NO <sub>x</sub> and VOC.
Waste Management Disposal Services of PA, Inc.	York .....	67-02047 ....	Internal Combustion Engines; Enclosed Ground Flares.	NO <sub>x</sub> and VOC.
Armstrong World Industries, Inc .....	Lancaster .....	36-2001 .....	Space Heaters; Dryers; Surface Coatings	NO <sub>x</sub> and VOC.

An explanation of the CAA's RACT requirements as they apply to the Commonwealth and EPA's rationale for approving these SIP revisions were provided in the DFR and will not be restated here.

In accordance with direct final rulemaking procedures, on April 4, 2005 (70 FR 16955), EPA also published a companion notice of proposed rulemaking on these SIP revisions inviting interested parties to comment on the DFR. Timely adverse comments were submitted on EPA's April 4, 2005 DFR.

On May 26, 2005 (70 FR 30378), due to receipt of the adverse comments on its approval of the PADEP's RACT

determination for the three individual sources, EPA published a withdrawal of the DFR. A summary of those comments and EPA's responses are provided in Section II of this document.

#### II. Summary of Public Comments and EPA Responses

##### Comment

On April 16, 2005, a citizen submitted adverse comments on EPA's DFR notice approving PADEP's VOC and NO<sub>x</sub> RACT determinations for three individual sources. The commenter states that Pennsylvania's air goes to New Jersey so the dirty air harms people in both states and RACT should be more rigorous. The commenter also states that

prescribed burning in parks and wildlife areas fills the air with particulate matter which causes lung cancer, heart attacks, strokes, and asthma.

##### Response

The rulemaking at issue is limited in scope and addresses the CAA section 182(b)(1) RACT requirements for sources located in the ozone nonattainment area classified as moderate or above. The commenter did not comment specifically on the RACT determinations for the three individual sources and did not submit any supporting technical data or information to support that the standards for the three individual sources do not

represent RACT. Rather, the commenter makes broad statements alleging: (1) That the regulations should be more "rigorous" than those required under the Act, and (2) that prescribed burning in parks and wildlife areas are filling the air with particulates, in turn causing health problems and fatalities. These comments are not "significant comments" to which EPA needs to respond. *Whitman v. American Trucking Ass'n.*, 531 U.S. 457, n.2 at 471 (2001) (Under the CAA, EPA need only respond to significant comments, i.e., comments relevant to EPA's decision). Mere "assertions that in the opinions of the commenter the Agency got it wrong," are not relevant comments warranting a response. *International Fabricare Inst. v. EPA*, 972 F.2d 384, 391 (D.C. Cir. 1992). As to the first comment, that the rules should be more "rigorous" than required under the Act, EPA has no authority to mandate that a State regulate more rigorously than required. Under the CAA's bifurcated scheme, the State is responsible for choosing how a source must be regulated for purposes of attaining the NAAQS and EPA's role is limited in reviewing the State's choice to ensure it meets the minimum statutory requirements. Here, as is clear from the commenter's first point, the commenter is not claiming that the regulations do not meet the statutory minimum, but rather that the statute does not require enough. EPA has no authority to modify the statute, as requested by the commenter nor does EPA have authority to require that the State to regulate more rigorously than required by the statute. The CAA is based upon "cooperative federalism," which contemplates that each State will develop its own SIP, and that States retain a large degree of flexibility in choosing which sources to control and to what degree. EPA must approve a State's plan if it meets the "minimum requirements of the CAA." *Union Elec. Co. v. EPA*, 427 U.S. 246, 264–266 (1976).

As to the commenter's second point, the rulemaking at issue creates additional, Federally-enforceable controls for individual sources of VOCs and NO<sub>x</sub>. This rulemaking does not address any emissions attributable to prescribed burning in New Jersey or elsewhere. Comments regarding the potential adverse effects of prescribed burning are not relevant to this rulemaking.

### III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP on January 27, 2005 to establish and require VOC and NO<sub>x</sub> RACT for three

sources pursuant to the Commonwealth's SIP-approved generic RACT regulations.

### IV. Statutory and Executive Order Reviews

#### 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 (Pub. L. 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 CAA. 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 CAA. 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. 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 establishing source-specific requirements for three named sources.

#### 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 January 3, 2006. 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 approving source-specific RACT requirements for three sources in the Commonwealth of Pennsylvania 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, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 21, 2005.

Donald S. Welsh,

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 NN—Pennsylvania**

■ 2. In Section 52.2020, the table in paragraph (d)(1) is amended by adding the entries for Waste Management

Disposal Services of Pennsylvania, Inc. (Pottstown Landfill); Waste Management Disposal Services of PA, Inc.; and Armstrong Industries, Inc. at the end of the table to read as follows:

**§ 52.2020 Identification of plan.**

*	*	*	*	*
(d)	*	*	*	
(1)	*	*	*	

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
* * * * *					
Waste Management Disposal Services of Pennsylvania, Inc. (Pottstown Landfill).	OP-46-0033	Berks; Montgomery ..	4/20/99; 1/27/04	11/2/05	[Insert page number where the document begins]. 52.2020(d)(1)(a).
Waste Management Disposal Services of PA, Inc.	67-02047 ....	York .....	4/20/99	11/2/05	[Insert page number where the document begins]. 52.2020(d)(1)(a).
Armstrong World Industries, Inc.	36-2001 .....	Lancaster .....	7/3/99	11/2/05	[Insert page number where the document begins]. 52.2020(d)(1)(a).

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[R03-OAR-2005-MD-0005; FRL-7992-5]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Repeal of NO<sub>x</sub> Budget Program COMAR 26.11.27 and 26.11.28**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a revision to the Maryland State Implementation Plan (SIP). The revision repeals Maryland's Nitrogen Oxides (NO<sub>x</sub>) Budget Program under COMAR 26.11.27 and 26.11.28. This action is in accordance with the Clean Air Act.

**DATES:** *Effective Date:* This final rule is effective on December 2, 2005.

**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) ID Number R03-OAR-2005-MD-0005. All documents in the docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Once in the system, select "quick search," then key in the appropriate RME identification number. 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 in RME 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 Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Powers, (215) 814-2308, or by e-mail at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

On July 28, 2005, (70 FR 43818), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of a SIP revision to repeal Maryland's Ozone Transport Commission (OTC) NO<sub>x</sub> Budget Program (OTC Program) under COMAR 26.11.27 (Post-RACT Requirements for NO<sub>x</sub> Sources) and COMAR 26.11.28 (Policies and Procedures Relating to Maryland's NO<sub>x</sub> Budget Program). The formal SIP revision was submitted by the Maryland Department of the Environment (MDE) on December 1, 2003.

**II. Summary of SIP Revision**

The SIP revision repeals Maryland's OTC Program, which implemented Maryland's portion of a regional cap and

trade program to reduce transport of ozone in 12 northeastern states and the District of Columbia. Maryland's OTC Program has been superseded by its more stringent, Federally-approved NO<sub>x</sub> Reduction and Trading Program which satisfies the NO<sub>x</sub> SIP Call.

A detailed discussion of the rationale for EPA's approval action is provided in the NPR and will not be restated here. EPA did not receive any comments on the NPR.

**III. Final Action**

EPA is approving the repeal of COMAR 26.11.27 and 26.11.28 as a revision to the Maryland SIP.

**IV. Statutory and Executive Order Reviews****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