

(b) *Exceptions:* Recreational vessels are authorized to pass under the bridge's east span.

(c) *Regulations.* (1) In accordance with the general regulations in 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP), Long Island Sound.

(2) Persons desiring to contact the Captain of the Port may do so at telephone number (203) 468-4401 or via VHF Marine Band Radio Channel 16 (156.8 MHz).

(3) All persons and vessels shall comply with the instructions of the COTP, or the designated on-scene U.S. Coast Guard representative. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels.

Dated: June 14, 2004.

**Peter J. Boynton,**

*Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.*

[FR Doc. 04-14372 Filed 6-23-04; 8:45 am]

BILLING CODE 4910-15-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[VA150-5079a; FRL-7777-7]

#### Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Emission Standards for Mobile Equipment Repair and Refinishing Operations in the Northern Virginia Volatile Organic Compound Emission Control Area

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Commonwealth of Virginia State Implementation Plan (SIP). The revision establishes regulations for the control of volatile organic compound (VOC) emissions from mobile equipment repair and refinishing operations in the northern Virginia portion of the Metropolitan Washington, DC Ozone Nonattainment Area (northern Virginia Area). EPA is approving this revision to the Commonwealth of Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on August 23, 2004, without further notice, unless EPA receives adverse written comment

by July 26, 2004. 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:** Submit your comments, identified by VA150-5079 by one of the following methods:

A. Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. E-mail: [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov).

C. Mail: Makeba Morris, Chief, Air Quality Planning Branch Name, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. VA150-5079. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The Federal [regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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:** Janice Lewis, (215) 814-2185, or by e-mail at [lewis.janice@epa.gov](mailto:lewis.janice@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On January 24, 2003 (68 FR 3410), EPA issued a determination that the Metropolitan Washington, DC ozone nonattainment area (DC Area) failed to attain the ozone standard by the statutory date of November 15, 1999, and reclassified the area from "serious" to "severe" for one-hour ozone. As a severe nonattainment area, the DC Area must now meet the requirements of section 182(d) of the CAA, and attain the one-hour ozone standard by November 15, 2005. As a result of the reclassification to severe nonattainment, the States that comprise the DC Area (Maryland, Virginia, and the District of Columbia) must implement additional control measures and submit SIP revisions for post-1999 Rate of Progress Plans, Contingency Plans, and the Attainment Demonstration.

As part of Virginia's strategy to meet its portion of emission reductions keyed to the post-1999 ROPs, the 2005 attainment demonstration, and/or the contingency plan, the State adopted new measures to control volatile organic compound (VOC) emissions from four additional source categories, including a regulation to control emissions from solvent metal cleaning operations.

On February 23, 2004, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consists of four new regulations to 9 VAC 5, chapter 40, amendments to one existing article of 9 VAC 5, chapter 40, and amendments to one article of 9 VAC chapter 20.

The new regulations are:

(1) 9 VAC 5 chapter 40, New Article 42—"Emission Standards for Portable Fuel Container Spillage in the Northern Virginia Volatile Organic Compound Emissions Control Area" ("Rule 4-42")—(9 VAC 5-40-5700 to 9 VAC 5-40-5770).

(2) 9 VAC 5, chapter 40, New Article 47—"Emission Standards for Solvent Metal Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area" ("Rule 4-47")—(9 VAC 5-40-6820 to 9 VAC 5-40-6970).

(3) 9 VAC 5, chapter 40, New Article 48—"Emission Standards for Mobile Equipment Repair and Refinishing Operations in the Northern Virginia

Volatile Organic Compound Emission Control Area" ("Rule 4-48")—(9 VAC 5-40-6970 to 9 VAC 5-40-7110).

(4) 9 VAC 5, chapter 40, New Article 49—"Emission Standards for Architectural and Industrial Maintenance Coatings in the Northern Virginia Volatile Organic Compound Emissions Control Area" ("Rule 4-49")—(9 VAC 5-40-7120 to 9 VAC 5-40-7230).

The February 23, 2004, submittal also included amendments to 9 VAC 5-20-21, "Documents incorporated by reference," to incorporate by reference additional test methods and procedures needed for Rule 4-42 or Rule 4-49, and, also amendments to section 9 VAC 5-40-3260 of Article 24, "Emission Standards for Solvent Metal Cleaning Operations Using Non-Halogenated Solvents" ("Rule 4-24").

This action concerns only Rule 4-48 of the February 23, 2004, SIP revision. The remaining portions of the February 23, 2004, SIP revision submittal which will include Rule 4-42, Rule 4-47 and Rule 4-49, as well as all of the amendments and additions to 9 VAC 5-40-3260 and 9 VAC 5-20-21, will be the subject of separate rulemaking actions.

## II. Summary of SIP Revision

On February 23, 2004, the Virginia Department of Environmental Quality (VADEQ) submitted a formal revision to its SIP. The SIP revision consists of VOC emission standards for mobile equipment repair and refinishing operations in the northern Virginia counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford, and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. Affected persons must comply by January 1, 2005.

The Virginia mobile equipment repair and refinishing operations (Rule 4-48) applies to each mobile equipment repair and refinishing operation. The provisions also apply to each person who sells coatings used in such operations. This regulation applies only to sources in the northern Virginia volatile organic compounds emissions control area. The regulation defines applicability, compliance, notification, monitoring, recordkeeping, and reporting requirements similar to the OTC model rule.

## III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

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 demonstrates a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, 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, 1998, 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.

## IV. Final Action

EPA is approving a revision to the Commonwealth of Virginia SIP to establish regulations for the control of VOC emissions from mobile equipment repair and refinishing operations in the northern Virginia ozone nonattainment area, which was submitted on February 23, 2004. Implementation of this VOC control measure will strengthen the Virginia SIP, and result in emission reductions that will assist the DC area in meeting the additional requirements associated with its reclassification as a severe nonattainment area for one-hour ozone.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. 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 August 23, 2004, without further notice unless EPA receives adverse comment by July 26, 2004. 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.

## V. 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 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 August 23, 2004. 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 the Commonwealth of Virginia’s regulation to control emission from solvent metal cleaning operations in the northern Virginia area, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 14, 2004.

**Thomas C. 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 VV—Virginia

■ 2. In Section 52.2420, the table in paragraph (c) is amended by adding entries under chapter 40, part II to read as follows:

#### § 52.2420 Identification of plan.

\* \* \* \* \*

(c) EPA approved regulations.

## EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation (former SIP citation)
*	*	*	*	*
Chapter 40—Existing Stationary Sources				

## EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation (former SIP citation)
*	*	*	*	*
<b>Part II—Emission Standards</b>				
*	*	*	*	*
Article 48 .....	Emission Standards for Mobile Equipment Repair and Refinishing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area (Rule 4–48)			
5–40–6970 ....	Applicability and designation of affected facility	3/24/04 .....	[6/24/04 <i>Federal Register</i> page citation].	
5–40–6980 ....	Definitions .....	3/24/04 .....	[6/24/04 <i>Federal Register</i> page citation].	
5–40–6990 ....	Standards for volatile organic compounds .....	3/24/04 .....	[6/24/04 <i>Federal Register</i> page citation].	
5–40–7000 ....	Standard for visible emissions .....	3/24/04 .....	[6/24/04 <i>Federal Register</i> page citation].	
5–40–7010 ....	Standard for fugitive dust/emissions .....	3/24/04 .....	[6/24/04 <i>Federal Register</i> page citation].	
5–40–7040 ....	Compliance .....	3/24/04 .....	[6/24/04 <i>Federal Register</i> page citation].	
5–40–7050 ....	Compliance schedule .....	3/24/04 .....	[6/24/04 <i>Federal Register</i> page citation].	
5–40–7060 ....	Test methods and procedures .....	3/24/04 .....	[6/24/04 <i>Federal Register</i> page citation].	
5–40–7070 ....	Monitoring .....	3/24/04 .....	[6/24/04 <i>Federal Register</i> page citation].	
5–40–7080 ....	Notification, records and reporting .....	3/24/04 .....	[6/24/04 <i>Federal Register</i> page citation].	
5–40–7090 ....	Registration .....	3/24/04 .....	[6/24/04 <i>Federal Register</i> page citation].	
5–40–7100 ....	Facility and control equipment maintenance or malfunction.	3/24/04 .....	[6/24/04 <i>Federal Register</i> page citation].	
5–40–7110 ....	Permits .....	3/24/04 .....	[6/24/04 <i>Federal Register</i> page citation].	
*	*	*	*	*

[FR Doc. 04–14214 Filed 6–23–04; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 300**

[FRL–7777–3]

**National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List****AGENCY:** Environmental Protection Agency.**ACTION:** Direct Final Deletion of the property known as 475 South Jefferson Street in Orange, New Jersey as a partial deletion of the U.S. Radium Corp. Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA), Region 2, announces the deletion of the property known as 475 South Jefferson Street in Orange, New Jersey, which is part of Operable Unit Two of the U.S. Radium Corp. Superfund Site, from the National Priorities List (NPL) and requests public comment on this action. The U.S. Radium Corp. Site is listed on the NPL as located in Orange, New Jersey, but is composed of contiguous and non-contiguous properties in the municipalities of Orange, West Orange, and South Orange. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution

Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This Direct Final Notice of partial deletion of the U.S. Radium Corp. Site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995).

This deletion pertains to the property known as 475 South Jefferson Street in Orange, New Jersey (Block 158, Lot 21), which is located at the corner of South Jefferson Street and Nassau Street. EPA and the State of New Jersey, through the Department of Environmental Protection, have determined that all appropriate remedial actions under CERCLA have been completed at 475 South Jefferson Street and no further cleanup pursuant to CERCLA is appropriate. This partial deletion covers only the property known as 475 South Jefferson Street; all other properties and operable units remain on the NPL.

**DATES:** This direct final partial deletion will be effective August 23, 2004, unless EPA receives significant adverse comments by July 26, 2004. If significant adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register**, informing the public that the deletion will not take effect.

**ADDRESSES:** Comments should be mailed to: Stephanie Vaughn, Remedial Project Manager, New Jersey Remediation Branch, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 19th Floor, New York, New York 10007–1866.

Comprehensive information on the U.S. Radium Corp. Site is available for viewing, by appointment only, at: U.S. EPA Records Center, 290 Broadway—18th Floor, New York, New York 10007–1866.

**Hours:** 9 a.m. to 5 p.m.—Monday through Friday. Contact the Records Center at (212) 637–4308.

Information is also available for viewing at the Information Repository located at: Orange Public Library, 348 Main Street, Orange, New Jersey 07050.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Vaughn, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 19th Floor, New York, New York 10007–1866, phone: (212) 637–3914; fax: (212) 637–4393; e-mail: [vaughn.stephanie@epa.gov](mailto:vaughn.stephanie@epa.gov).

**SUPPLEMENTARY INFORMATION:****Table of Contents**

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Partial Site Deletion

**I. Introduction**

The United States Environmental Protection Agency (EPA) Region 2