

Name of source	Permit number	County	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
* * *	*	*	*	*	*
SGL Carbon Corporation .....	OP 24-131	Elk .....	5/12/95 5/31/95	11/1/05 [Insert page number where the document begins].	52.2020(d)(1)(e).
Salem Tube, Inc. ....	OP 43-142	Mercer .....	2/16/99	11/1/05 [Insert page number where the document begins].	52.2020(d)(1)(e).
Dominion Trans, Inc. ....	18-00006	Clinton .....	6/15/99 9/29/03	11/1/05 [Insert page number where the document begins].	52.2020(d)(1)(e).

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[FR Doc. 05-21752 Filed 10-31-05; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R03-OAR-2005-DE-0001; FRL-7992-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Delaware; Ambient Air Quality Standard for Ozone and Fine Particulate Matter

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve revisions to the Delaware State Implementation Plan (SIP). The revisions were submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) and consist of modifications to the ambient air quality standards for ozone and fine particulate matter. EPA is approving these revisions in the SIP in accordance with the Clean Air Act (CAA).

**DATES:** This final rule is effective on December 1, 2005.

**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) ID Number R03-OAR-2005-DE-0001. 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 Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by e-mail at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On April 1, 2003, DNREC submitted a formal SIP revision that consists of an amendment that included the revised ambient air quality standards for ozone and particulate matter. On July 18, 2005 (70 FR 41146), EPA published a direct final rule (DFR) approving revisions to the Delaware's SIP. An explanation of the CAA's requirements as they apply to Delaware 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 July 18, 2005 (70 FR 41166), EPA also published a companion notice of proposed rulemaking (NPR) on these SIP revisions inviting interested parties to comment on the DFR. Timely adverse comments were submitted on EPA's July 18, 2005 DFR.

On September 16, 2005 (70 FR 54639), due to receipt of the adverse comments submitted in response to the DFR, 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 July 18, 2005, a citizen submitted adverse comments on EPA's DFR notice approving Delaware's ambient air quality standards for ozone

and fine particulate matter. The commenter states that the regulations are not strict enough and that they leave too much latitude for polluters to poison and kill us. The commenter also states that the fines and penalties for polluters should be increased by one thousand percent.

*Response:* The rulemaking at issue is limited in scope and addresses the 1997 Federal 8-hour ozone and PM2.5 standards that Delaware incorporates into Section 6 of Regulation 3 of the Delaware Regulations Governing the Control of Air Pollution. The commenter did not submit any supporting technical data or information to support that the regulations are not strict enough. Rather the commenter makes broad statements alleging (1) that the regulations should be more stringent than those required under the Act, and (2) that the fines and penalties for polluters should be increased one thousand percent. 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 comment that the rules should be more stringent than required under the Act, EPA has no authority to mandate that a State regulate more stringently than required. Under the CAA's bifurcated scheme, the State is responsible for choosing how air pollution sources must be regulated for purposes of attaining the national ambient air quality standards (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 comment, 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 the State to regulate more stringently 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, this rulemaking does not address fines and penalties for polluters and, therefore, is not relevant to this rulemaking.

### III. Final Action

EPA is approving the revisions to the Delaware SIP submitted by DNREC on April 1, 2003 to incorporate the 8-hour ambient air quality standards for ozone and fine particulate matter. Delaware's SIP revisions for the ambient air quality standards for ozone and fine particulate matter are consistent with the 8-hour Federal NAAQS.

### 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 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 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 the Delaware's 8-hour ambient air quality standards for ozone and fine particulate matter 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, Ozone, Particulate matter, 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 I—Delaware

■ 2. In Section 52.420, the table in paragraph (c) is amended by adding an entry for Regulation 1, Section 2 after the existing entry, and revising the entries for Regulation 3, Sections 1, 6, and 11 to read as follows:

#### § 52.420 Identification of plan.

(c) EPA approved regulations.

## EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
<b>Regulation 1 Definitions and Administrative Principles</b>				
* Section 2 .....	* Definitions .....	* 02/11/2003	* 11/1/2005 [Insert page number where the document begins].	* Added definition of PM2.5.
* .....	* .....	* .....	* .....	* .....
<b>Regulation 3 Ambient Air Quality Standards</b>				
* Section 1 .....	* General Provisions .....	* 02/11/2003	* 11/1/2005 [Insert page number where the document begins].	* Addition of section 1.6.j.
* .....	* .....	* .....	* .....	* .....
* Section 6 .....	* Ozone .....	* 02/11/2003	* 11/1/2005 [Insert page number where the document begins].	* Addition to section 6.1—"This standard shall be applicable to New Castle and Kent Counties." Addition of section 6.2.
* .....	* .....	* .....	* .....	* .....
* Section 11 .....	* PM10 and PM2.5 Particulates .....	* 02/11/2003	* 11/1/2005 [Insert page number where the document begins].	* Section title added "and PM2.5." Addition of sections 11.2.a. and 11.2.b.
* .....	* .....	* .....	* .....	* .....

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**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency****44 CFR Part 64****[Docket No. FEMA-7899]****Suspension of Community Eligibility**

**AGENCY:** Department of Homeland Security, Federal Emergency Management Agency (FEMA), Mitigation Division.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has

adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

**DATES: Effective Dates:** The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

**ADDRESSES:** If you want to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Grimm, Mitigation Division, 500 C Street SW., Room 412, Washington, DC 20472, (202) 646-2878.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance

coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance