

This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2008. 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 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, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 20, 2007.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ 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 Y—Minnesota**

■ 2. In § 52.1220 the table in paragraph (d) is amended by revising the entry for "Xcel Energy, Inver Hills Generating Plant" to read as follows:

**§ 52.1220 Identification of plan.**

\* \* \* \* \*  
(d) \* \* \*

**EPA-APPROVED MINNESOTA SOURCE-SPECIFIC PERMITS**

Name of source	Permit No.	State effective date	EPA approval date	Comments
Xcel Energy—Inver Hills Generating Plant.	03700015-003	10/27/06	12/5/07, [Insert page number where the document begins].	Only conditions cited as "Title I condition: SIP for SO <sub>2</sub> NAAQS."

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[FR Doc. E7-23496 Filed 12-4-07; 8:45 am]  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R03-OAR-2007-0479; FRL-8500-9]

**Approval and Promulgation of Air Quality Implementation Plans; Virginia; Amendments Extending the Applicability of Four Consumer and Commercial Product Regulations to the Fredericksburg Volatile Organic Compound (VOC) Emissions Control Area**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision consists of amendments to extend the geographic applicability of four consumer and commercial product regulations—Portable Fuel Container Spillage, Mobile Equipment Repair and Refinishing Operations, Architectural and Industrial Maintenance Coatings, and Consumer Products—to the Fredericksburg VOC Emissions Control Area. These amendments are necessary to implement VOC contingency measures

within the Fredericksburg Area. The revision also incorporates by reference two additional test methods and procedures needed for Virginia's Architectural and Industrial Maintenance Coatings Rule. EPA is approving this revision to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** *Effective Date:* This final rule is effective on January 4, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2007-0479. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. 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 through [www.regulations.gov](http://www.regulations.gov) 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 Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

**FOR FURTHER INFORMATION CONTACT:** Ellen Wentworth, (215) 814-2034, or by e-mail at [wentworth.ellen@epa.gov](mailto:wentworth.ellen@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On September 12, 2007 (72 FR 52028), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed the approval of amendments extending the geographic applicability of four consumer and commercial product regulations to the Fredericksburg VOC Emissions Control Area. The formal SIP revision was submitted by the Commonwealth of Virginia on May 14, 2007.

**II. Summary of the SIP Revision**

The May 14, 2007 SIP revision contained regulation amendments to 9 VAC 5 Chapter 40 that extended the geographic applicability of four consumer and commercial product regulations—Portable Fuel Container Spillage, Mobile Equipment Repair and Refinishing, Architectural and Industrial Maintenance Coatings, and Consumer Products—into the new Fredericksburg VOC Emissions Control Area established in 9 VAC 5-20-206 (March 2, 2007, 72 FR 9441). These regulations had formerly applied only in the Northern Virginia VOC Emissions Control Area, and were based on the Ozone Transport Commission (OTC) model rules. The OTC developed control measures into model rules for a

number of source categories and estimated emission reduction benefits from implementing those model rules. These regulations are necessary to implement VOC contingency measures within the Fredericksburg VOC Emissions Control Area. The revision also adds six additional specialty coatings to the Architectural and Industrial Maintenance Coatings regulation. Other specific requirements of Virginia's SIP revision and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

### 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 demonstrate 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 CAA, 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, extending the geographic applicability of four consumer and commercial product regulations—Portable Fuel Container Spillage, Mobile Equipment Repair and Refinishing Operations, Architectural and Industrial Maintenance Coatings, and Consumer Products—to the Fredericksburg VOC Emissions Control Area. EPA is also approving the incorporation by

reference of two additional test methods and procedures needed for Virginia's architectural and Industrial Maintenance Coatings Rule.

### 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 requirement, 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 approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *February 4, 2008*. 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, expanding the geographic applicability of four consumer and commercial product regulations to the Fredericksburg VOC Emissions Control 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, Incorporation by reference, Nitrogen dioxide, Ozone,

Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 20, 2007.

Donald S. Welsh,  
Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart VV—Virginia**

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entries for Chapter 40, Part II, Sections 5–40–5700, 5–40–5720, 5–40–5750, 5–40–6970, 5–40–7050, 5–40–7120, 5–40–7130, 5–40–7140, 5–40–7210, 5–40–7240, 5–40–7250, 5–40–7260, 5–40–7270, 5–40–7300, 5–40–7330, and 5–40–7360. The table in paragraph (e) is amended by adding an entry for Documents Incorporated by Reference after the eighth existing entry for Documents Incorporated by Reference. The amendments read as follows:

**§ 52.2420 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES**

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
<b>Chapter 40 Existing Stationary Sources (Part IV)</b>				
<b>Part II Emissions Standards</b>				
<b>Article 42 Portable Fuel Container Spillage (Rule 4–42)</b>				
5–40–5700 .....	Applicability and designation of affected facility.	10/04/06	12/05/07 [Insert page number where the document begins].	Revision extends the applicability to include the Fredericksburg VOC Emissions Control Area.
5–40–5720 .....	Standard for volatile organic compounds.	10/04/06	12/05/07 [Insert page number where the document begins].	
5–40–5750 .....	Compliance schedules .....	10/04/06	12/05/07 [Insert page number where the document begins].	

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
<b>Article 48 Mobile Equipment Repair and Refinishing Operations (Rule 4-48)</b>				
5-40-6970 .....	Applicability and designation of affected facility.	10/04/06	12/05/07 [Insert page number where the document begins].	Revision extends the applicability to include the Fredericksburg VOC Emissions Control Area
5-40-7050 .....	Compliance schedule .....	10/04/06	12/05/07 [Insert page number where the document begins].	

**Article 49 Architectural and Industrial Maintenance Coatings (Rule 4-49)**

5-40-7120 .....	Applicability and designation of affected facility.	10/04/06	12/05/07 [Insert page number where the document begins].	Revision extends the applicability to include the Fredericksburg VOC Emissions Control Area.
5-40-7130 .....	Definitions .....	10/04/06	12/05/07 [Insert page number where the document begins].	Revision adds definitions for the following: ASTM, Calcimine recoater, Concrete surface retarder, Conversion varnish, Impacted immersion coating, Nuclear coatings, and Thermoplastic rubber coating and mastic.
5-40-7140 .....	Standard for volatile organic compounds.	10/04/06	12/05/07 [Insert page number where the document begins].	Revision adds standards for the following categories: Calcimine recoaters, Conversion varnishes, Concrete surface retarder, Impacted immersion coatings, Nuclear coatings, and Thermoplastic rubber coating and mastic.
5-40-7210 .....	Compliance schedules .....	10/04/06	12/05/07 [Insert page number where the document begins].	

**Article 50 Consumer Products (Rule 4-50)**

5-40-7240 .....	Applicability .....	10/04/06	12/05/07 [Insert page number where the document begins].	Revision extends the applicability to include the Fredericksburg VOC Emissions Control Area.
5-40-7250 .....	Exemptions .....	10/04/06	12/05/07 [Insert page number where the document begins].	
5-40-7260 .....	Definitions .....	10/04/06	12/05/07 [Insert page number where the document begins].	
5-40-7270 .....	Standard for volatile organic compounds.	10/04/06	12/05/07 [Insert page number where the document begins].	
5-40-7300 .....	Administrative requirements .....	10/04/06	12/05/07 [Insert page number where the document begins].	
5-40-7330 .....	Compliance schedules .....	10/04/06	12/05/07 [Insert page number where the document begins].	
5-40-7360 .....	Notification, records and reporting	10/04/06	12/05/07 [Insert page number where the document begins].	

(e) \* \* \*

\* \* \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional Explanation
Documents Incorporated by Reference (9 VAC 5-20-21, Paragraphs E.4.a. (21) and (22))..	Fredericksburg VOC Emissions Control Area Designated in 9 VAC 5-20-206.	05/14/07	12/05/07 [Insert page number where the document begins].	State effective date is 10/04/06.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 97**

[EPA-R05-OAR-2007-0390; FRL-8501-1]

**Approval of Implementation Plans; Ohio; Clean Air Interstate Rule**

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

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to the receipt of an adverse comment, the EPA is withdrawing the October 16, 2007 (72 FR 58546), direct final rule approving the State of Ohio's September 26, 2007, request to revise the Ohio State Implementation Plan (SIP) by incorporating provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR). In the direct final rule, EPA stated that if adverse comments were submitted by November 15, 2007, the rule would be withdrawn and not take effect. On November 9, 2007, EPA received a comment. EPA believes this comment is adverse and, therefore, EPA is withdrawing the direct final rule. EPA will address the comment in a subsequent final action based upon the proposed action also published on October 16, 2007 (72 FR 58571). EPA will not institute a second comment period on this action.

**DATES:** The direct final rule published at 72 FR 58546 on October 16, 2007, is withdrawn as of December 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6084, [paskevicz.john@epa.gov](mailto:paskevicz.john@epa.gov).

**List of Subjects**

**40 CFR Part 52**

Environmental protection, Air pollution control, Electric utilities,

Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

**40 CFR Part 97**

Environmental protection, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: November 23, 2007.

**Gary Gulezian,**

*Acting Regional Administrator, Region 5.*

■ Accordingly, the amendments to 40 CFR 52.1870 and part 97 which were published in the **Federal Register** on October 16, 2007 (72 FR 58546) on pages 58552-58553 are withdrawn as of December 5, 2007.

[FR Doc. E7-23504 Filed 12-4-07; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

[EPA-R03-OAR-2006-0353; EPA-R03-OAR-2007-0476; EPA-R03-OAR-2005-VA-0007; EPA-R03-OAR-2005-VA-0013; EPA-R03-OAR-2005-0548; EPA-R03-OAR-2006-0485; EPA-R03-OAR-2006-0682; EPA-R03-OAR-2006-0692; EPA-R03-OAR-2006-0817; FRL-8500-8]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland, Pennsylvania, Virginia, West Virginia; Redesignation of 8-Hour Ozone Nonattainment Areas to Attainment and Approval of the Areas' Maintenance Plans and 2002 Base-Year Inventories; Correction**

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

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** This document corrects an error in the part 81 tables of a series of final rules pertaining to EPA's approval of ozone redesignation requests for Kent and Queen Anne, Erie, Fredericksburg, Shenandoah, Charleston, Parkersburg-Marietta, Steubenville-Weirton, Wheeling, and Huntington-Ashland 8-hour ozone nonattainment areas. The requests to redesignate the areas from nonattainment to attainment were submitted by Maryland, Pennsylvania, Virginia, and West Virginia.

**EFFECTIVE DATE:** December 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Irene Shandruk, (215) 814-2166 or by e-mail at [shandruk.irene@epa.gov](mailto:shandruk.irene@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document wherever "we" or "our" are used we mean EPA. The following table is a summary of the dates on which we published final rulemaking documents announcing our approval of three simultaneous actions for nine areas: (1) Redesignation from nonattainment to attainment of 8-hour ozone national ambient air quality standard (NAAQS); (2) approval of the areas' maintenance plans, and (3) approval of the emissions 2002 base-year inventories and mobile budgets. The effective dates for the three actions were announced in the **DATES** section as being 30 days from the date of publication.

