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[FR Doc. 2017-17861 Filed 8-25-17; 8:45 am]

BILLING CODE 6560-50-P

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

[EPA-R03-OAR-2017-0394; FRL-9966-96-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Approval of an Alternative Volatile Organic Compound Emission Standard****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the State of Maryland's state implementation plan (SIP). Maryland requested EPA incorporate by reference into the Maryland SIP a Maryland Department of the Environment (MDE) order that establishes an alternative volatile organic compound (VOC) emission standard for National Gypsum Company (NGC) that will ensure that this source remains a minor stationary source of VOCs. EPA is approving the SIP submittal incorporating by reference MDE's order for NGC in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on November 27, 2017 without further notice, unless EPA receives adverse written comment by September 27, 2017. 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 Docket ID No. EPA-R03-OAR-2017-0394 at <https://www.regulations.gov>, or via email to [stahl.cynthia@epa.gov](mailto:stahl.cynthia@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the

official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:**Gregory A. Becoat, (215) 814-2036, or by email at [becoat.gregory@epa.gov](mailto:becoat.gregory@epa.gov).**SUPPLEMENTARY INFORMATION:****I. Background**

On June 24, 2016, MDE submitted a formal revision to the Maryland SIP. The SIP revision consists of a request to incorporate by reference a MDE departmental order that establishes an alternative VOC emission standard for NGC as it appears in the permit-to-construct conditions issued by MDE in order to ensure that it remains a minor stationary source of VOCs. The alternative VOC emissions limit of 195 pounds per operating day with at least a 99% overall VOC control efficiency will achieve a stringent emissions discharge reduction and is more stringent than any established standard for reasonably available control technology (RACT) for major stationary sources of VOCs in COMAR 26.11.19. Under the Code of Maryland Regulations (COMAR) 26.11.06.06E—“Exceptions,” a source may request an exception to a VOC emissions limit from MDE if the source is not subject to new source review (NSR) and if the source is unable to comply with COMAR 26.11.06.06B—“Control of VOC from Installations.”

Located in the Baltimore ozone nonattainment area, NGC is a wallboard manufacturing facility that emits both nitrogen oxides (NO<sub>x</sub>) and VOCs. Ground level ozone is formed when NO<sub>x</sub> and VOCs react in the presence of sunlight. NO<sub>x</sub> and VOC are referred to as ozone precursors and are emitted by many types of pollution sources, including motor vehicles, power plants, industrial facilities, and area wide sources, such as consumer products and lawn and garden equipment. Scientific evidence indicates that adverse public health effects occur following exposure to ozone. These effects are more pronounced in children and adults with lung disease. Breathing air containing

ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases. In response to this scientific evidence, EPA promulgated in 1979 the first ozone national ambient air quality standard (NAAQS), the 0.12 part per million (ppm) 1-hour ozone NAAQS. See 44 FR 8202 (February 8, 1979).<sup>1</sup> Under the 1979 1-hour ozone NAAQS, the Baltimore Area (specifically, Anne Arundel County, Baltimore City, Baltimore County, Carroll County, Harford County, and Howard County) was designated as a severe nonattainment area. 56 FR 56694 (November 6, 1991). On July 18, 1997, EPA revised the health-based NAAQS for ozone based on 8-hour average concentrations. 62 FR 38856. Under the 1997 8-hour ozone NAAQS, the Baltimore Area was designated as a moderate nonattainment area. 69 FR 23858 (April 30, 2004). Later, the Baltimore Area was reclassified as a serious nonattainment area for the 1997 8-hour ozone NAAQS. 77 FR 4901 (February 1, 2012). On March 27, 2008 (78 FR 16436), EPA strengthened the 8-hour ozone NAAQS (2008 8-hour ozone NAAQS). Under the 2008 8-hour ozone NAAQS, the Baltimore Area was designated as a moderate nonattainment area. 69 FR 23858 (April 30, 2004).

On April 30, 2004 (69 FR 23858), EPA announced its revocation of the 1979 1-hour ozone NAAQS for all purposes and for all areas in the country, effective June 15, 2005. In the final rulemaking, EPA determined that certain nonattainment planning requirements would continue to be in effect under the revoked standard for nonattainment areas under the 1979 1-hour ozone NAAQS, including RACT. Under the anti-backsliding provisions codified at 40 CFR 51.905, the Baltimore Area remains subject to the anti-backslide obligations for the revoked 1979 1-hour ozone NAAQS. Since the Baltimore Area was designated as a severe nonattainment area for the 1979 1-hour ozone NAAQS, all sources in the nonattainment area emitting greater than 25 tons per year (tpy) of VOC or NO<sub>x</sub> are major stationary sources.

NGC is a major stationary source of NO<sub>x</sub>, but is not a major stationary source for VOCs. NGC consists of two major manufacturing lines, Board Kiln No. 1 and Board Kiln No. 2. When NGC modified Board Kiln No. 1 to manufacture new silicone wallboard products, NGC needed limits to remain a minor stationary source of VOC (under

<sup>1</sup> EPA had previously promulgated a NAAQS for total photochemical oxidants.

25 tpy) and avoid NSR review under COMAR 26.11.17 as the production of the new silicone products would emit more VOC emissions from the source. However, NGC was subject to VOC emission limits in COMAR 26.11.06.06. Since Board Kiln No. 1 was installed before May 12, 1972, COMAR 26.11.06.06B(1)(a) would require its VOC emissions to be less than 200 pounds per day (lbs/day) unless the discharge is reduced by 85 percent or more overall. As Board Kiln No. 2 was installed in April 1998, it is subject to COMAR 26.11.06.06B(1)(b), which, except as provided in COMAR 26.11.06.06E, limits the discharge of VOC to not exceed 20 lbs/day unless the discharge is reduced by 85 percent or more overall. As a result of the increased production, NGC was unable to comply with COMAR 26.11.06.06B and is thus eligible to apply for an exception under COMAR 26.11.06.06E. However, exceptions under COMAR 26.11.06.06E require EPA approval of specific emission limitations and operating practices in order to become federally enforceable. MDE entered a consent order with NGC on March 11, 2016 establishing alternative VOC emissions limits for Board Kiln No. 1 and Board Kiln No. 2 that would become part of NGC's permit to operate. The permit restrictions approved for NGC, based on MDE's order, will ensure that NGC remains a federally enforceable minor stationary source with appropriate emission limitations and practices and not subject to NSR for its modification to Board Kiln No. 1.

## II. Summary of SIP Revision and EPA Analysis

In the June 24, 2016 SIP submittal, MDE included an order authorizing an alternative VOC emissions standard per COMAR 26.11.06.06E in connection with the construction permit modification MDE prepared for NGC. MDE requested EPA incorporate by reference the order with the alternative VOC emissions standard into the Maryland SIP. The MDE order for NGC requires that NGC comply with the following alternative VOC standards and other conditions: (1) NGC shall install a regenerative thermal oxidizer (RTO) on Board Kiln No. 1, which is designed to achieve at least a 99% overall VOC control efficiency, or not greater than 0.5 parts per million by volume (ppmv) of VOC in the flue gases exiting the RTO (which is more restrictive for Board Kiln No. 1); (2) total VOC emissions from Board Kiln No. 1 and Board Kiln No. 2, combined, shall not exceed 195 pounds per operating day (which is more stringent than Board

Kiln No. 1 subject to 200 lbs/day and Board Kiln No. 2 subject to 20 lbs/day, separately); (3) total premises wide VOC emissions shall be less than 25 tons in any rolling 12-month period to ensure that the total net VOC emissions increase resulting from the modification of Board Kiln No. 1 and Board Kiln No. 2, combined, is less than the nonattainment NSR threshold, which is 25 tons in any rolling 12-month period; (4) NGC shall vent the flue gases from Board Kiln No. 1 through the RTO prior to discharging to the atmosphere when manufacturing silicone XP water resistant wallboard and eXP water resistant wallboard; (5) the temperature of the combustion zone of the RTO shall be maintained to at least the minimum temperature established during the most recent stack emissions tests demonstrating compliance with the daily VOC emission limit of 195 pounds per operating day; (6) NGC shall manufacture regular wallboard (any wallboard that is not silicone XP water resistant wallboard or eXP water resistant wallboard and is not prohibited for production by MDE) only in Board Kiln No. 2; and (7) NGC shall monitor daily production for each type of wallboard and shall calculate total daily VOC emissions from Board Kiln No. 1 and Board Kiln No. 2 to demonstrate compliance with the alternative VOC emission standard of 195 pounds per operating day.

After evaluating this SIP revision, EPA concludes that this SIP revision continues to address and minimize VOC emissions in the Baltimore ozone nonattainment area and will result in reduced VOC emissions from NGC. The alternative VOC emissions limit for NGC will significantly reduce emissions of VOC, an ozone precursor. EPA finds this Order to be a SIP strengthening measure in accordance with requirements in section 110 of the CAA. EPA finds that the submittal strengthens the State of Maryland's SIP and is in accordance with section 110 of the CAA including 110(a) and 110(l) as the SIP revision will not interfere with reasonable further progress, attainment of any NAAQS or any other applicable CAA requirements as more VOC emissions reduction is expected from this limit on NGC's VOC emissions.

## III. Final Action

EPA is approving the Maryland June 2016 SIP revision submittal which requests incorporation by reference of a MDE order that includes an alternative VOC emission standard for NGC as the revision meets requirements in CAA section 110. EPA is publishing this rule without prior proposal because EPA

views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of this issue of the **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 *November 27, 2017* without further notice unless EPA receives adverse comment by *September 27, 2017*. 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.

## IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Maryland's Department of the Environment Order No. 510-0233-6-0646 and -1569. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update of the SIP compilation.<sup>2</sup>

## V. Statutory and Executive Order Reviews

### A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a).

<sup>2</sup> 62 FR 27968 (May 22, 1997).

Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

*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, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and 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). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

*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 November 27, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with

objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this issue of the **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action.

This action, which approves Maryland's SIP revision incorporating by reference a MDE order establishing a VOC emission standard for NGC, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 12, 2017.

**Cecil Rodrigues,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

- 1. The authority citation for part 52 continues to read as follows:

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

**Subpart V—Maryland**

- 2. In § 52.1070, the table in paragraph (d) is amended by adding the entry for National Gypsum Company at the end of the table to read as follows:

**§ 52.1070 Identification of plan.**

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

**EPA APPROVED STATE SOURCE-SPECIFIC REQUIREMENTS**

Name of source	Permit number/type	State effective date	EPA approval date	Additional explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
National Gypsum Company (NGC).	Departmental Order .....	03/11/16	8/28/17 [ <i>Insert Federal Register citation</i> ].	The SIP approval includes specific alternative volatile organic compound emission limits and other conditions for NGC as established by the Departmental Order.