

that a party wishes to dispute a genuine issue of material fact to be resolved in the consideration of the Postal Service's request, that party shall file with the Commission a request for a hearing within the time allowed in the notice of proceeding. The request for a hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the fact or facts and the evidence it intends to provide in support of its position. The Commission will hold hearings on a Postal Service request made pursuant to this subpart when it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve that issue.

#### § 3001.171 [Amended]

■ 9. In § 3001.171, remove paragraph (b) and remove the designation for paragraph (a).

#### § 3001.173 [Amended]

■ 10. In § 3001.173, revise paragraphs (b), (d), and (e) to read as follows:

#### § 3001.173 Procedures—expedition of public notice and procedural schedule.

\* \* \* \* \*

(b) Persons who are interested in participating in a proceeding to consider Postal Service requests to establish a provisional service may intervene pursuant to Subpart A of the rules of practice. Parties may withdraw from a proceeding by filing a notice with the Secretary of the Commission.

\* \* \* \* \*

(d) When the Postal Service files a request under the provisions of this subpart, it shall on that same day file a notice that briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of a Request for Establishment of a Provisional Service to be considered under §§ 3001.171 through 3001.176.

(e) Within 5 days after receipt of a Postal Service request under the provisions of this subpart, the Commission shall issue a notice of proceeding and provide interested persons a minimum of 15 days after filing of the Postal Service request within which to intervene. In the event that a party wishes to dispute a genuine issue of material fact to be resolved in the consideration of the Postal Service's request, that party shall file with the Commission a request for a hearing within the time allowed in the notice of proceeding. The request for a hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be

the fact or facts and the evidence it intends to provide in support of its position. The Commission will hold hearings on a Postal Service request made pursuant to this subpart when it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve that issue.

■ 11. Revise § 3001.174 to read as follows:

#### § 3001.174 Rule for decision.

The Commission will issue a decision on the Postal Service's proposed provisional service in accordance with the policies of the Postal Reorganization Act, but will not recommend modification of any feature of the proposed service which the Postal Service has identified in accordance with § 3001.172(a)(3). The purpose of this subpart is to allow for consideration of proposed provisional services within 90 days, consistent with the procedural due process rights of interested persons.

#### § 3001.181 [Amended]

■ 12. In § 3001.181, remove paragraph (b), remove the designation of paragraph (a).

[FR Doc. E6-19289 Filed 11-15-06; 8:45 am]

BILLING CODE 7710-FW-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2006-0059; FRL-8242-4]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; State Implementation Plan Revision for Burlington Industries, Clarksville, VA

**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 the removal of a Consent Agreement (Agreement) currently in the SIP for the control of sulfur dioxide emissions from Burlington Industries located in Clarksville, Virginia. This Agreement has been superseded by a federally enforceable state operating permit that imposes operating restrictions on the facility's boilers and the shutdown of the remainder of the facility. This action is being taken under the Clean Air Act (CAA).

**DATES:** *Effective Date:* This final rule is effective on December 18, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2006-0059. All documents in the docket are listed in the <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 <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:** Sharon McCauley, (215) 814-3376, or by e-mail at [mccauley.sharon@epa.gov](mailto:mccauley.sharon@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On July 11, 2006 (71 FR 39330), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of the removal of an Agreement from the Virginia SIP. The Agreement was written for the control of emissions of sulfur dioxide from the Burlington Industries facility located in Clarksville, Mecklenburg County, Virginia. This Agreement has been superseded by a federally enforceable state operating permit dated May 17, 2004, which imposes operating restrictions on the facility's boilers and the subsequent shutdown of the remainder of the facility. The formal SIP revision was submitted by Virginia on July 12, 2004.

Other specific requirements of the SIP revision for Burlington Industries, Clarksville, Virginia 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.

##### II. 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 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.

### III. Final Action

EPA is approving the removal of the Consent Agreement for Burlington Industries, Clarksville, Virginia as a revision to the Virginia 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 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 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. 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 one named source.

### 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 16, 2007. 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, to approve the removal of the Consent Agreement for Burlington Industries, Clarksville, Virginia, 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, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 3, 2006.

**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 VV—Virginia

#### § 52.2420 [Amended]

■ 2. In § 52.2420, the table in paragraph (d) is amended by removing the entry for Burlington Industries.

[FR Doc. E6-19272 Filed 11-15-06; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[EPA-HQ-OAR-2006-0497; FRL-8243-2]

RIN 2060-AN96

### Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

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

**ACTION:** Direct final rule.

**SUMMARY:** New source performance standards (NSPS) limiting emissions of, among other pollutants, nitrogen oxides (NO<sub>x</sub>) from industrial-commercial-institutional steam generating units capable of combusting more than 100 million British thermal units (Btu) per hour were promulgated on November 25, 1986. The standards limit NO<sub>x</sub> emissions from the combustion of fossil fuels either solely or in combination with other fuels or wastes. The standards include provisions for the establishment of facility-specific NO<sub>x</sub> standards for steam generating units which simultaneously combust fossil fuel and chemical byproduct/waste under certain conditions. This amendment promulgates a facility-specific NO<sub>x</sub> standard for a steam generating unit which simultaneously combusts fossil fuel and chemical byproduct offgas at the Innovene USA LLC facility located in Lima, Ohio.

**DATES:** This direct final rule will be effective on January 16, 2007 without further notice, unless EPA receives material adverse comments by December 18, 2006, unless a hearing is requested by November 27, 2006. If a timely hearing request is submitted, the hearing will be held on December 1, 2006 and we must receive written comments on or before January 2, 2007. If EPA receives such comments, it will publish a timely withdrawal in the **Federal Register** indicating the amendment is being withdrawn due to adverse comments.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0497, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).
- *Fax:* (202) 566-1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW.,

Washington, DC 20460. Please include a total of two copies.

• *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. EPA, 1301 Constitution Avenue, NW., Room B102, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0497. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, 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 <http://www.regulations.gov>, or e-mail. The <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 <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.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket, EPA/DC,