

responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2-1, paragraph (32)(e) of the Instruction, from further environmental documentation as this action relates to the promulgation of operating regulations or procedures for drawbridges. Under figure 2-1, paragraph (32)(e) of the Instruction, an "Environmental Analysis Checklist" is

not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. From, November 1, 2006 through April 30, 2007, § 117.618(b) is suspended and a new paragraph (d) is added to read as follows:

#### § 117.618 Saugus River.

\* \* \* \* \*

(d) The draw of the General Edwards SR1A Bridge at mile 1.7, need not open for the passage of vessel traffic from November 1, 2006 through April 30, 2007.

Dated: June 16, 2006.

**Mark J. Campbell,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R03-OAR-2006-0059; FRL-8192-8]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to the removal of a Consent Agreement from the Virginia SIP. The Consent 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. This action is being taken under the Clean Air Act (CAA or the Act).

**DATES:** Written comments must be received on or before August 10, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2006-0059 by one of the following methods:

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

B. *E-mail:* [campbell.david@epa.gov](mailto:campbell.david@epa.gov)

C. *Mail:* EPA-R03-OAR-2006-0059, David J. Campbell, Chief, Permits and Technical Assistance Branch, Mailcode 3AP11, 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. EPA-R03-OAR-2006-0059. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.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 [www.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.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, *i.e.*, 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 [www.regulations.gov](http://www.regulations.gov) or in hard copy 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.

**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:** On July 12, 2004, the Virginia Department of Environmental Quality submitted a revision request to its SIP entitled "SIP Revision for Burlington Industries". The request was for the removal of a Consent Agreement incorporated into the Virginia SIP. This agreement was written to regulate the control of emissions of sulfur dioxide from the Burlington Industries facility located in Clarksville, Virginia.

## I. Background

The need to restrict the operation and reduce the allowable sulfur dioxide emissions of the Burlington Industries facility was discovered through an Air Quality Impact Analysis supporting a Prevention of Significant Deterioration permit application submitted by the Mecklenburg Cogeneration Limited Partnership. The analysis indicated that Burlington Industries had the potential to exceed the primary and secondary National Ambient Air Quality Standards (NAAQS) for sulfur dioxide when operating at its maximum allowable levels. As a result, Burlington Industries voluntarily agreed to a control program with the Virginia State Air Pollution Control Board.

In 1991, Burlington Industries submitted a plan (including proposed operating restrictions and a dispersion modeling demonstration) for mitigating any potential NAAQS violations. Because no regulations for issuing operating permits existed at that time in Virginia, the plan was incorporated into

a legally enforceable Consent Agreement on November 19, 1991 between the Commonwealth and Burlington Industries. In order to then make the provisions federally enforceable, Virginia submitted the Consent Agreement to EPA as part of a SIP revision, and EPA subsequently approved this SIP revision on March 18, 1992 (57 FR 9388).

## II. Summary of SIP Revision

EPA is proposing to approve this SIP revision submitted by the Commonwealth of Virginia. Burlington Industries' federal operating (Title V) permit which included conditions from the Consent Agreement was issued on December 14, 2001. In 2002, Burlington Industries closed its facility and all of the manufacturing equipment was removed; however, the boilers remained operable. Burlington Industries requested that the Commonwealth impose additional operating restrictions at the facility. As a result of these additional restrictions, the facility is no longer considered a major source with respect to the Title V program. In order to make these new restrictions state and Federally enforceable, it is necessary to include Burlington Industries in a new Federally enforceable state operating permit, which would then become the legally enforceable mechanism for implementing the restrictions.

The new Federally enforceable state operating permit issued on May 17, 2004 vacated the original Consent Agreement from Nov. 19, 1991 and automatically rendered it ineffective at the state level. In order to vacate the Agreement at the federal level, the Virginia SIP must be revised to remove the Consent Agreement previously approved at 40 CFR 52.2420(c)(96), and currently cited at 40 CFR 52.2420(d) and 52.2465(c)(96). EPA is proposing to remove the Consent Agreement from the Virginia SIP.

## 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 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. Proposed Action

EPA is proposing to approve the removal of the vacated Consent Agreement for Burlington Industries from the Virginia SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed rule also does 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), nor will it 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), because it merely proposes to approve 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 proposed rule also is not subject to Executive Order 13045 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule to approve the Virginia Department of Environmental Quality State Implementation Plan revision request for the removal of the Consent Agreement for the Burlington Industries facility located in Clarksville, Mecklenburg County, VA, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and

recordkeeping requirements, Sulfur oxides.

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

Dated: June 27, 2006.

**William T. Wisniewski,**

*Acting Regional Administrator, Region III.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-8195-4]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Intent to Delete the T. H. Agriculture and Nutrition Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 9 announces the intent to delete the T. H. Agriculture and Nutrition site ("the site") from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA and the State of California, through the California Department of Toxic Substances Control, have determined that the remedial action for the site has been successfully executed.

**DATES:** Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before August 10, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-1986-0005, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instruction for submitting comments.
- E-mail the superfund docket center (specify docket ID number)—e-mail address: [superfund.docket@epa.gov](mailto:superfund.docket@epa.gov).
- Fax the docket center (specify docket number)—fax number: 202-566-0224
- Mail hardcopy to the docket center (specify docket number) address: