

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. 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 two named sources located in Fairfax County, Virginia, namely, the Central Intelligence Agency, and the National Reconnaissance Office.

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve NO<sub>x</sub> RACT determinations for two specific sources located in Fairfax County, Virginia must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2004. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 26, 2004.

**Richard J. Kampf,**  
*Acting Regional Administrator.*

■ 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**

■ 2. In § 52.2420, the table in paragraph (d) is amended by adding entries for "Central Intelligence Agency (CIA), George Bush Center for Intelligence" and "National Reconnaissance Office, Boeing Service Center" at the end of the table to read as follows:

**§ 52.2420 Identification of plan.**

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

**EPA-APPROVED VIRGINIA SOURCE-SPECIFIC REQUIREMENTS**

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Central Intelligence Agency (CIA), George Bush Center for Intelligence.	Registration No. 71757 .....	04/16/04 ..	[Insert <b>Federal Register</b> page number where the document begins], 09/09/04.	52.2420(d).
National Reconnaissance Office, Boeing Service Center.	Registration No. 71988 .....	04/16/04 ..	[Insert <b>Federal Register</b> page number where the document begins], 09/09/04.	52.2420(d).

[FR Doc. 04-20132 Filed 9-8-04; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[VA156-5082a; FRL-7809-7]

**Approval and Promulgation of Air Quality Implementation Plans; Virginia; NO<sub>x</sub> RACT Determinations for Prince William County Landfill**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Virginia State Implementation Plan (SIP). The revision consists of a reasonably available control technology (RACT) determination, contained in an operating permit for the control of nitrogen oxides (NO<sub>x</sub>) from Prince William County Landfill, Registration No. 72340, located in Prince William County, Virginia. EPA is approving

these revisions in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on November 8, 2004, without further notice, unless EPA receives adverse written comment by October 12, 2004. 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 VA156–5082 by one of the following methods:

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

B. E-mail: [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov).

C. Mail: Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, 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. VA156–5082. EPA's policy is that all comments received will be included in the public docket without change, 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 [regulations.gov](http://www.regulations.gov) or e-mail. The Federal [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 [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.

Copies of the documents relevant to this action are available 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; and Commonwealth of Virginia, Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Betty Harris, (215) 814–2168, or by e-mail at [harris.betty@epa.gov](mailto:harris.betty@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On April 23, 2004, the Commonwealth of Virginia submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a RACT determination, contained in a permit to operate, for the control of NO<sub>x</sub> from Prince William County Landfill, Registration No. 72340, located in Prince William County, Virginia.

**II. Summary of SIP Revision**

*Prince William County Landfill, Registration No. 72340*

Prince William County Landfill, located in Prince William County, Virginia operates a municipal solid waste landfill. The Virginia Department of Environmental Quality (VADEQ) submitted a permit to operate for the landfill. This permit implements RACT requirements for the following: (a) Two (2) Caterpillar Model 3516 Inter-cooled Turbo-Charged Lean Burn Engines with Air-to-Fuel Controllers, each rated at 1340 BHp and (b) One (1) LFG Specialties Model EF8.545I10 Enclosed Flare rated at 2000 scfm. The landfill equipment shall be constructed so as to allow for emissions testing upon reasonable notice at any time, using appropriate methods. Test ports shall be provided when requested in accordance with the applicable performance specification in 40 CFR part 60, Appendix A.

*Emission Controls*

Emissions of NO<sub>x</sub> from the two Caterpillar engines shall be controlled through the use of spark-ignited, inter-cooled, turbo-charged lean burn internal combustion engines with automatic air to fuel ratio control. Emissions of NO<sub>x</sub> from the LFG Specialties enclosed flare shall be controlled by maintaining a retention time of at least 0.6 seconds, a minimum temperature of 1400 °F, auto combustion air control, automatic shutoff gas valve, and automatic re-start system. All control devices shall be provided with adequate access for

inspection and shall be in operation when the engines and flare are operating.

*Monitoring Devices*

The Caterpillar engines shall be equipped with a device to continuously measure and record the temperature in the exhaust manifold. The enclosed flare shall be equipped with a device to continuously measure and record the combustion temperature in the flare. Each monitoring device shall be installed, maintained, calibrated and operated in accordance with approved procedures which shall include, as a minimum, the manufacturer's written requirements or recommendations. Each monitoring device shall be provided with adequate access for inspection and shall be in operation when the engines and/or the enclosed flare are operating.

*Emission Limits*

NO<sub>x</sub> emissions from the operation of each of the two Caterpillar engines shall not exceed 1.2 g/Bhp-hr. NO<sub>x</sub> emissions from the operation of the LFG Specialties enclosed flare shall not exceed 0.06 lb/MMBtu.

*Compliance Demonstration*

Initial performance tests shall be conducted for NO<sub>x</sub> on each of the Caterpillar engines and the enclosed flare to determine compliance with the emission limits. The facility shall demonstrate compliance by November 1, 2005. Tests shall be conducted and reported and data reduced as set forth in 9 VAC 5–50–30, and the test methods and procedures contained in each applicable section or subpart listed in 9 VAC 5–50–410.

*On Site Records*

The landfill shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. These records shall include, but not limited to: (a) The total amount of NO<sub>2</sub>, emitted from the facility, calculated monthly as the sum of each consecutive 12 month period, (b) annual throughput of landfill gas to the engines and the flare, calculated monthly as the sum of each consecutive 12 month period, (c) monthly hours of operation and maintenance performed upon each of the engines and the flare, (d) the manufacturer's documentation for the operation, maintenance and specifications as required. These records shall be available for inspection by VADEQ and shall be current for the most recent 5 years.

### III. EPA's Evaluation of the SIP Revisions

EPA is approving this SIP submittal because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT. The Commonwealth has also imposed recordkeeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

### IV. 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.

### V. Final Action

EPA is approving revisions to the Commonwealth of Virginia's SIP which establish and require NO<sub>x</sub> RACT for Prince William County Landfill. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **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 8, 2004, without further

notice unless EPA receives adverse comment by October 12, 2004. 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.

### VI. 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. 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 Prince William County Landfill located in Prince William County, Virginia.

*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 November 8, 2004. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 26, 2004.

**Richard J. Kampf,**

*Acting 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**

■ 2. Section 52.2420, the table in paragraph (d) is amended by adding the entry for Prince William County Landfill at the end of the table to read as follows:

**§ 52.2420 Identification of plan.**

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

**EPA-APPROVED VIRGINIA SOURCE-SPECIFIC REQUIREMENTS**

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
Prince William County Landfill	Registration No. 72340	04/16/04	[Insert <b>Federal Register</b> page number where the document begins], 09/09/04.	52.2420(d).

[FR Doc. 04-20130 Filed 9-8-04; 8:45 am]

BILLING CODE 6560-50-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 5, 25 and 97**

[**IB Docket 02-54; FCC 04-130**]

**RIN 3060-A106**

**Mitigation of Orbital Debris**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission (Commission or FCC) adopts a Second Report and Order that

amends the Commission's rules to minimize the amount of orbital debris created by satellite systems and to mitigate the effects of orbital debris on operational spacecraft. Orbital debris consists of man-made objects that are not functioning spacecraft. Although orbital debris currently poses little short-term risk to operational spacecraft, an increase in orbital debris could have a significant impact in the long term on space activities, including important satellite communications. Adoption of these rules will help preserve the United States' continued affordable access to space, the continued provision of reliable U.S. space-based services—including communications and remote sensing satellite services for U.S. commercial, government, and homeland

security purposes—as well as the continued safety of persons and property in space and on the surface of the Earth. Adoption of these rules will also further the domestic policy objective of the United States to minimize the creation of orbital debris and is consistent with international policies and initiatives to achieve this goal.

**DATES:** Effective October 12, 2004, except for §§ 5.63(e), 25.114(d)(14), and 97.207(g) which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. Written comments on the Paperwork Reduction Act proposed