

will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by October 12, 2004.

**ADDRESSES:** Submit your comments, identified by VA155-5081 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. VA155-5081. 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 <http://www.regulations.gov> or e-mail. The Federal <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. 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 Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by e-mail at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, Virginia's Approval of NO<sub>x</sub> RACT Determinations for Two Individual Sources, that is located in the "Rules and Regulations" section of this **Federal Register** publication. 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.

Dated: August 26, 2004.

**Richard J. Kampf,**

*Acting Regional Administrator, Region III.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[VA156-5082b; FRL-7809-8]

#### 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:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of determining the reasonably available control technology (RACT) for the control of nitrogen oxides (NO<sub>x</sub>) from the Prince William County Landfill, located in Prince William County, Virginia. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are

received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by October 12, 2004.

**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 [www.regulations.gov](http://www.regulations.gov) or e-mail. The Federal [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. 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 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:** For further information, please see the information provided in the direct final action, Virginia's Approval of NO<sub>x</sub> RACT Determinations for Prince William County Landfill, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: August 26, 2004.

**Richard J. Kampf,**

*Acting Regional Administrator, Region III.*

[FR Doc. 04-20131 Filed 9-8-04; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### 43 CFR Part 25

RIN 1090-AA91

#### Procedures for Review of Mandatory Conditions and Prescriptions in FERC Hydropower Licenses

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of the Interior (Department) proposes a public review process for conditions and prescriptions of the Department pursuant to its authority under the Federal Power Act. The Department also proposes to create an administrative appeals process for review of such measures. The Federal Power Act authorizes the Department to include in hydropower licenses issued by the Federal Energy Regulatory Commission conditions and prescriptions necessary to protect Federal and tribal lands and resources and to provide fishways when navigable waterways or Federal reservations are used for hydropower generation. The public review process will enable the public and the license applicant to comment on the Department's preliminary conditions and prescriptions, and to provide information to assist the Department in its formulation of modified conditions and prescriptions. The information

obtained through this process will help the Department in refining and developing its conditions and prescriptions, which an applicant may appeal using the proposed appeals process to obtain an expeditious policy level review. These proposed processes are designed to coincide with and complement the Commission's overall licensing process. The Department recently worked with the Commission to develop a new integrated licensing process, see Federal Energy Regulatory Commission Order 2002, July 23, 2003, 104 FERC ¶ 61,109.

**DATES:** Comments should be received no later than November 8, 2004, late comments will be considered to the extent practicable.

**ADDRESSES:** You may submit comments, identified by RIN 1090-AA91, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [Larry\\_Finfer@ios.doi.gov](mailto:Larry_Finfer@ios.doi.gov). Include RIN 1090-AA91 in the subject line of the message.
- Fax: 202-208-4867.
- Mail: Office of the Secretary, Office of Policy Analysis, MS 4426-MIB, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

Your comments on the information collection provisions of this rulemaking should be sent to the attention of the desk officer for the Department of the Interior at the Office of Management and Budget via facsimile (202-395-6566) or by e-mail ([OIRA\\_Docket@omb.eop.gov](mailto:OIRA_Docket@omb.eop.gov)). Please also send a copy of these comments to the Office of Policy Analysis, U.S. Department of the Interior, at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** William Bettenberg, Office of Policy Analysis, MS4426-MIB, U.S. Department of the Interior, 1849 C St., NW., Washington, DC 20240; phone: 202-208-5978; fax: 202-208-4867; electronic mail address: [William\\_Bettenberg@ios.doi.gov](mailto:William_Bettenberg@ios.doi.gov).

#### **SUPPLEMENTARY INFORMATION:**

- I. Public Comment Procedures
- II. Background
- III. Discussion of the Proposed Rule
- IV. Commission Coordination
- V. Procedural Requirements

#### **I. Public Comment Procedures**

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law.

There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

#### **II. Background**

##### *Federal Power Act*

Subchapter I of the Federal Power Act (FPA), 16 U.S.C. 791-823c, vests in the Department of the Interior (Department), and other Federal resource agencies, the authority to include conditions and prescriptions in licenses for hydroelectric generating facilities issued by the Federal Energy Regulatory Commission (FERC or Commission) (see 18 CFR parts 4, 5, and 16). Under section 18 of the FPA, 16 U.S.C. 811, the U.S. Fish and Wildlife Service may prescribe fishways, and under section 4(e) of the FPA, 16 U.S.C. 797(e), the Secretary of the Interior may establish conditions necessary for the adequate protection and utilization of reservations. "Reservations," as used in the FPA, include lands and certain facilities under the jurisdiction of the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Reclamation, or Bureau of Indian Affairs. Through these sections, the FPA authorizes the Department to set conditions for the protection of public and tribal resources that may be affected when navigable waterways or Federal reservations are used for hydropower generation licensed by FERC.

The Department's final conditions and prescriptions pursuant to sections 4(e) and 18 of the FPA are mandatory. Thus, once the Department has issued its conditions and prescriptions, the Commission must incorporate these measures into any hydropower license it issues under the FPA. This authority has been recognized and upheld by the Federal courts, including the Supreme Court. *See Escondido Mut. Water Co. v. La Jolla Band of Mission Indians*, 466 U.S. 765 (1984); *American Rivers v. FERC*, 201 F.3d 1186 (9th Cir. 1999); *American Rivers v. FERC*, 129 F.3d 99 (2d Cir. 1997); *Bangor Hydro-Electric Co. v. FERC*, 78 F.3d 659 (D.C. Cir. 1996). After a license has been issued, the license, including the Department's