

TABLE 2.—EPA APPROVED MEMPHIS-SHELBY COUNTY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 16–82 .....	Control of Sulfur Dioxide Emissions .....	8/14/89	6/15/89, 54 FR 25456	
Section 16–83 .....	Visible Emissions .....	8/14/89	6/15/89, 54 FR 25456	
Section 16–84 .....	Particulate Matter from Incinerators .....	8/14/89	6/15/89, 54 FR 25456	
Section 16–85 .....	Required Sampling, Recording, and Reporting .....	5/20/96	3/19/96, 61 FR 11136	
Section 16–86 .....	Methods of Sampling and Analysis .....	8/14/89	6/15/89, 54 FR 25456	
Section 16–87 .....	Limits on Emissions due to Malfunctions, Startups & Shutdowns.	8/14/89	6/15/89, 54 FR 25456	
Section 16–88 .....	Nuisance Abatement .....	8/14/89	6/15/89, 54 FR 25456	
Section 16–89 .....	Fugitive Dust .....	8/14/89	6/15/89, 54 FR 25456	
Section 16–90 .....	General Alternate Emission Standard .....	8/14/89	6/15/89, 54 FR 25456	
Section 16–91 .....	Lead Emission Standards .....	8/14/89	6/15/89, 54 FR 25456	

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 [FR Doc. 03–31587 Filed 12–24–03; 8:45 am]  
 BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

[PA 124–4222; FRL–7603–4]

**Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Pennsylvania; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving the Commonwealth of Pennsylvania (the Commonwealth) municipal solid waste landfill plan (the plan) for implementing emission guideline (EG) requirements promulgated under the Clean Air Act (the Act). The plan establishes enforceable nonmethane organic compounds (NMOC) emissions limits for existing landfills within the Commonwealth, excluding the geographic areas under the authority of Allegheny County and the City of Philadelphia.

**EFFECTIVE DATE:** This final rule is effective January 28, 2004.

**ADDRESSES:** 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 the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** James B. Topsale, P.E., at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On June 24, 2003, EPA published a direct final rule (68 FR 37421) approving the Pennsylvania section 111(d) landfill plan (the plan). Also, on that date, EPA published a proposed rule (68 FR 37449) to allow interested parties to submit comments. During the public comment period, EPA received numerous adverse comments and questions from The Alliance for A Clean Environment (ACE). As a result, on August 19, 2003, EPA withdrew the direct final rule granting approval of the Pennsylvania plan (68 FR 49706).

**II. Response(s) to Public Comments**

Many of the comments and questions EPA received from ACE (the “commenter”) are not relevant or germane to the Pennsylvania plan approval process in the context of section 111(d) Clean Air Act requirements, and the related regulatory provisions of 40 CFR part 60, subparts B, Cc, and WWW. In this section of the **Federal Register** notice, EPA is responding primarily to those adverse comments and questions that possibly could be considered relevant or germane to the plan approval process in the context of section 111(d) requirements only. The many ACE comments and questions, which are not relevant to the plan approval, address the following generic and source specific issues:

- (a) Ambient air quality and emission standards for criteria pollutants, and related health impacts, as regulated under section 110 of the Act;
- (b) Toxic air pollutants, and related health impacts, as regulated under section 112 of the Act;
- (c) Radioactive landfill gas emissions, and related health impacts;

(d) Suggested revisions or amendments to EPA’s promulgated landfill rules—EG and new source performance standards (NSPS ); and (e) Clean Air Act violations at a specific landfill facility and EPA’s enforcement response.

All of the above listed issues are beyond the scope of EPA’s section 111(d) plan requirements and approval authority. Any ACE issue, which is not listed generically above is also considered irrelevant to this plan approval action. EPA’s responses to possible relevant issues and questions are given below.

**A Summary of Comments and Questions—EPA Responses**

1. How were Pennsylvania communities notified that they had an opportunity to comment on the plan? *Response*—Three separate PADEP public hearings were held on the plan in June 1997. Prior to each hearing, a thirty (30) day notice was published in one or more newspapers that serve the public hearing site area. These notices were published in six (6) prominent Pennsylvania newspapers and the Pennsylvania bulletin. The PADEP has met EPA’s public notification and public participation requirements of 40 CFR 60.23. This is discussed in EPA’s June 24, 2003 **Federal Register** notice (68 FR 37421), paragraph II. J, A Record of the Public Hearing on the State Plan.

2. On what basis does EPA view the plan approval as a non-controversial action? *Response*—EPA’s action is based on section 111(d) requirements of the Act, not sections 110 and 112, relating to state plans and requirements for criteria (e.g., ozone) and hazardous (e.g., dioxins/furans, mercury compounds, and radionuclides) air pollutants, respectively. The Pennsylvania landfill plan contains requirements that are no less stringent than those required by section 111(d) of the Act and the related provisions of 40 CFR part 60, subparts B and Cc. Also, the plan contains

facility specific compliance schedules that are expeditious, as required by subpart B, and require final compliance by a date earlier than that of the generic compliance schedule under the Federal Plan, 40 CFR part 62, subpart GGG, promulgated on November 8, 1999. The Federal plan is applicable to all affected landfills located in those states without an approved plan, such as Pennsylvania, until the state plan is approved by EPA. The Pennsylvania plan meets all applicable federal requirements, as discussed in EPA's June 24, 2003 **Federal Register** notice and the related technical support document (TSD).

3. What does "controlled" mean to EPA? *Response*—Section 111 of the Act requires EPA to promulgate EG and NSPS based on the application of what is referred to as best demonstrated technology (BDT), considering costs and any nonair quality health and environmental impacts and energy requirements, at the time the EG and NSPS are promulgated. The EG and NSPS establish a nationwide minimum level of control, for specific stationary source categories, based on the use of BDT. BDT for landfills, emitting 50 megagrams per year of NMOC or more, requires the reduction of MSW landfill gas emissions with: (a) A well designed and operated gas collection system and (b) a control device capable of reducing NMOC in the collected gas by 98 weight percent. Both EPA landfill rules (the EG and NSPS) recognize that various combustion devices, including flares, can be an effective means of reducing, by 98% or better, the NMOC emissions collected from a landfill. The BDT requirements for landfills are stipulated in the promulgated March 12, 1996 MSW landfill EG and the related NSPS, subparts Cc and WWW, sections 60.33c(c); and 60.752(b)(2)(ii) and (iii), respectively. More details about landfill gas control technologies and their performance are discussed in the preamble to the proposed EPA landfill rules (56 FR 24476, May 30, 1991). Also, additional information is given in EPA's proposed landfill rule amendments, as published in the May 23, 2002 **Federal Register** (67 FR 36477).

4. EPA admits to the public health dangers of landfill gas (*i.e.*, NMOC) emissions, so why wouldn't EPA require the safest technology? *Response*—Consistent with the requirements of section 111 of the Act, EPA's landfill rules set a nationwide minimum level of control based on the use of BDT. EPA believes BDT control alternatives are safe for the operators and impacted community, providing the control equipment is properly designed,

constructed, and operated. Because NMOC are health-related, states plans must ordinarily be at "least as stringent" as the EG. However, nothing under EPA's section 111 plan regulations, 40 CFR part 60, subpart B, prohibits the PADEP from adopting and enforcing more stringent emission standards. Nevertheless, the submitted Pennsylvania plan control requirements are no less stringent than BDT, as stipulated and required in subpart B and the EG, subpart Cc.

5. Does Pennsylvania have the legal authority to do anything about Clean Air Act [MSW landfill rule] violations in the past? *Response*—A state can only enforce section 111(d) plan requirements if (a) it has received EPA approval of the state plan, or (b) it has requested and received delegation of the Federal plan, 40 CFR part 62, subpart GGG. Neither is the case with the PADEP. At this time, the PADEP can enforce state only requirements. When EPA approves the Pennsylvania plan, PADEP will then have the authority under federal law to enforce the state plan, including possible "past" violations. PADEP has satisfactorily demonstrated its authority to implement the state plan, as stated in EPA's approval notice (68 FR 37422) of June 24, 2003.<sup>1</sup>

6. Why hasn't the Pottstown Landfill been included in this source inventory? *Response*—Any landfill that was modified or reconstructed after May 30, 1991 is subject to subpart WWW, and not the requirements of section 111(d) of the Act. A modification occurs if there is a physical change at the landfill that increases the capacity of the landfill beyond its permitted capacity. Based on documents from the PADEP and the Pottstown's landfill engineer, the landfill is a modified source, and thus subject to the NSPS, subpart WWW, and not section 111(d) requirements of either the Pennsylvania or Federal plan. Although the landfill EG and NSPS both require use of the same BDT, both stipulate different initial reporting and final compliance date requirements. However, if we assume that the Pottstown Landfill is a designated facility, subject to section 111(d) requirements, and was somehow overlooked in the Pennsylvania plan inventory, EPA's earlier plan approval notice (68 FR 37424) states, " \* \* \* if an unknown designated landfill is not

covered by the scope of this plan and is discovered after EPA plan approval, that landfill will be subject to the promulgated Federal plan requirements until the PADEP amends its plan to include the previously unknown designated landfill." In other words, under EPA's approval action, the Pottstown landfill would be covered by the promulgated Federal plan, even if at a later date it is determined that the facility is in fact subject to section 111(d) requirements.

7. With a health threat of NMOC emissions, why would a landfill get 2½ years to comply? *Response*—Considering the size and NMOC applicability thresholds of affected landfills, EPA believes 2½ years is generally expeditious. This timeframe is reflected in the promulgated EG, NSPS, and the Federal plan. As noted above, the Pennsylvania plan requires final compliance earlier than what is stipulated in the Federal plan.

8. How is the applicability threshold (50 megagrams per year) determined and by whom? *Response*—The measurement methods, applicable to both existing and new landfills, are specified in the landfill NSPS at section 60.754, Test Methods and procedures. Although the landfill owner/operator conducts the tests, both PADEP and EPA have oversight authority and can require a source retest with regulatory personnel on site during the test.

9. Were violations reported to EPA by PADEP under the plan provision that requires state submittal of annual reports on plan enforcement? *Response*—Under the plan, the noted reports are not due until one year after EPA approval of the plan. See the EPA **Federal Register** notice of June 24, 2003 (68 FR 37423), section II. K, Provision for Annual State Progress Reports to EPA. Within one year of EPA's approval of the plan, EPA expects the PADEP will begin submittal of annual compliance reports.

10. How were the people notified about changes to the original plan? *Response*—Other than changes in order to meet EPA promulgated revisions to the EG, we know of no plan changes, subsequent to its original submittal, that relaxes plan applicability, emission standards, operating requirements, recordkeeping and reporting, and compliance dates.

11. The commenter objects to PADEP's retention of source "trade secret" information, and its unavailability to the public, and questions what method or process trade secret information can be expected from operating a landfill. *Response*—It appears that PADEP's willingness to

<sup>1</sup> With respect to the enforcement of NSPS requirements, on May 8, 1985, PADEP received automatic delegation of all NSPS from EPA. See the August 23, 1985 **Federal Register**. Accordingly, the PADEP has had the authority to enforce subpart WWW requirements since March 12, 1996, the date of rule promulgation

release all source compliance and emissions data, except for that relating to "trade secrets," is consistent with EPA's subpart B requirements, 40 CFR 60.25(c). 40 CFR 60.25(c) only requires public access to compliance and emissions data that is correlated with applicable emissions standards (e.g., NMOC).

12. The commenter questions the Pennsylvania plan requirements regarding the frequency of emissions monitoring and the reliability of collected data. *Response*—The frequency of monitoring and the collection of reliable data are consistent with applicable EG requirements, 40 CFR 60.34c and 60.35c, as noted in EPA's June 24, 2003 **Federal Register** notice (68 FR 37423), and the related technical support document (TSD).

### III. Final Action

EPA is approving the Pennsylvania plan. This determination is based upon the rationale discussed in the proposed and related direct final rulemakings (68 FR 37449 and 37421, June 24, 2003) and EPA's evaluation of submitted public comments and questions, as discussed above. Any revisions to the plan or associated landfill air quality operating permits will not be considered part of the applicable plan until submitted by the PADEP in accordance with the provisions of 40 CFR 60.28.

### 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 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 111(d) plan 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 111(d) plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d) plan submission, to use VCS in place of a 111(d) plan 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 sixteen (16) specific sources.

#### 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 February 27, 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, approving the Pennsylvania section 111(d) MSW landfill plan, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 15, 2003.

**Thomas Voltaggio,**

*Acting Regional Administrator, Region III.*

■ 40 CFR part 62, subpart NN, is amended as follows:

#### PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

#### Subpart NN—Pennsylvania

■ 2. Sections 62.9635, 62.9636, and 62.9637 are added to subpart NN, "Landfill Gas Emissions From Existing Municipal Solid Waste Landfills" to read as follows:

##### § 62.9635 Identification of plan.

Section 111(d) plan for municipal solid waste landfills, as submitted on July 1, 1997, and as amended through April 9, 2003 by the Pennsylvania Department of Environmental Protection. The plan excludes the

geographical areas under the authority of Allegheny County and the City of Philadelphia.

#### **§ 62.9636 Identification of sources.**

The plan applies to existing Pennsylvania landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

#### **§ 62.9637 Effective date.**

The effective date of the plan for municipal solid waste landfills is January 28, 2004.

[FR Doc. 03-31866 Filed 12-24-03; 8:45 am]

BILLING CODE 6560-50-U

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 70**

[CA 110-OPP; FRL-7603-1]

### **Approval and Promulgation of Operating Permits Program; San Diego County Air Pollution Control District**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the San Diego County Air Pollution Control District Operating Permits (Title V) Program. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving a rule revision that addresses a change in the major source threshold for volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>). This change is based on the redesignation of San Diego County as in attainment of the federal one-hour ozone standard. As a result of this action, some sources that would have previously been considered major sources, and therefore would have been required to obtain a Title V operating permit, would no longer need to apply for a Title V permit. We are also approving revisions to several other parts of San Diego's Title V program. For more information see "What is being addressed in this document," below.

**DATES:** These rule revisions are effective on February 27, 2004 without further notice, unless EPA receives adverse comments by January 28, 2004. If we receive such comment, we will publish a timely withdrawal in the **Federal**

**Register** to notify the public that these revisions will not take effect.

**ADDRESSES:** Send comments to Gerardo Rios, Permits Office Chief (AIR-3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901 or e-mail to [rios.gerardo@epa.gov](mailto:rios.gerardo@epa.gov). Comments may also be submitted at <http://www.regulations.gov>.

You can inspect copies of the submitted rule revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment.

#### **FOR FURTHER INFORMATION CONTACT:**

Kathleen Stewart, EPA Region IX, (415) 947-4119, [stewart.kathleen@epa.gov](mailto:stewart.kathleen@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

- I. The Part 70 Operating Permits Program
  - A. What is the part 70 operating permits program?
  - B. What is the Federal approval process for revisions to an operating permits program?
  - C. What does Federal approval of State revisions mean to me?
- II. This Action
  - A. What revisions are being approved?
  - B. Have the requirements for approval been met?
  - C. Public comment and final action.
- III. Statutory and Executive Order Reviews

#### **I. The Part 70 Operating Permits Program**

##### *A. What Is the Part 70 Operating Permits Program?*

The Clean Air Act Amendments (CAA) of 1990 require all states to develop an operating permits program that meets federal criteria listed in 40 Code of Federal Regulations (CFR) part 70. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program (also known as a Title V program) is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

##### *B. What Is the Federal Approval Process for Revisions to an Operating Permits Program?*

In order for state regulations to be incorporated into the federally-

enforceable part 70 operating permits program, states must formally adopt regulations consistent with state and federal requirements. Once a state regulation is adopted, the state submits it to the EPA for inclusion into the approved operating permits program. The EPA must provide public notice and seek additional public comment regarding the proposed federal action on the state submission. If adverse comments are received, they must be addressed prior to any final federal action by EPA.

##### *C. What Does Federal Approval of State Revisions Mean to Me?*

Enforcement of a state regulation is primarily a state responsibility both before and after incorporation into the federal program. However, after a state regulation has been federally approved, the EPA is authorized to take enforcement action against violators, and under section 304 of the CAA, citizens are authorized to take civil action to address violations. In addition, federal approval of state regulations ensures that the state program is consistent with federal requirements.

#### **II. This Action**

##### *A. What Revisions Are Being Approved?*

EPA has requested that each permitting authority periodically submit any revised part 70 rules for approval as a revision to their approved part 70 program. In a letter dated August 19, 2003, San Diego County Air Pollution Control District requested that EPA approve revisions to Rules 1401(c); 1410(i), (j), (l), and (q); 1418(b), (c), and (e); 1415 (a); 1421(a) and (b); and 1425(a) and (b). A complete listing of each rule change is contained in the technical support document which is a part of the docket for this action and which is available from the EPA contact above. A few of the rule revisions which may be of interest, however, are discussed here. The remaining revisions are administrative in nature and do not change the substantive requirements of the rule.

*Rule 1401(c):* The District added language to exclude non-road engines from the definition for major stationary source; added a definition for non-road engine by reference to 40 CFR part 89; changed the major source threshold for VOCs and NO<sub>x</sub> from 50 tons per year (tpy) to 100 tpy in response to the redesignation of San Diego County as in attainment of the federal one-hour ozone standard (see 68 FR 37976, June 26, 2003); and clarified the role of fugitive emissions in determining if a source is major.