

of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### F. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 1998. 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 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 26, 1998.

**Lynda F. Carroll,**

*Acting Regional Administrator, Region 6.*

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 E—Arkansas

2. Section 52.170 is amended by adding paragraph (c)(29) to read as follows:

##### § 52.170 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(29) Revisions to the Arkansas State Implementation Plan submitted by the Governor on September 14, 1992.

(i) Incorporation by reference.

(A) Arkansas Department of Pollution Control and Ecology (ADPC&E) Minute Order No. 92-55 passed July 24, 1992.

(B) ADPC&E Regulation #19, "Compilation of Regulations of the Arkansas State Implementation Plan for

Air Pollution Control," except Section 19.8, as adopted by the Arkansas Commission on Pollution Control and Ecology on July 24, 1992, effective August 30, 1992.

(ii) Additional materials. None.

3. Section 52.181 is amended by revising paragraph (a) to read as follows:

##### § 52.181 Significant deterioration of air quality.

(a) The plan submitted by the Governor of Arkansas on April 23, 1981 (as adopted by the Arkansas Commission on Pollution Control and Ecology (ACPCE) on April 10, 1981), June 3, 1988 (as revised and adopted by the ACPCE on March 25, 1988), and June 19, 1990 (as revised and adopted by the ACPCE on May 25, 1990), Prevention of Significant Deterioration (PSD) Supplement Arkansas Plan of Implementation for Air Pollution Control, as recodified in Regulation #19, Section 19.9, Prevention of Significant Deterioration Supplement, submitted by the Governor on September 14, 1992 (as adopted by the ACPCE on July 24, 1992), is approved as meeting the requirements of part C of the Clean Air Act for preventing significant deterioration of air quality.

\* \* \* \* \*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 62

[PA-107-4066a; FRL-5994-4]

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

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

**ACTION:** Direct final rule.

**SUMMARY:** This action approves the municipal solid waste landfill (MSW) 111(d) plan submitted by the Commonwealth of Pennsylvania on behalf of Allegheny County for the purpose of controlling landfill gas emissions from existing MSW landfills. The plan was submitted to fulfill requirements of the Clean Air Act (the Act). The Allegheny County plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

**DATES:** This final rule is effective June 9, 1998 unless within May 11, 1998 adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Section, Mailcode 3AP22, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Air Protection Division, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania; and Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

**FOR FURTHER INFORMATION CONTACT:** James B. Topsale at (215) 566-2190, or by e-mail at topsale.james@epamail.gov.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

The Act requires that States submit plans to EPA to implement and enforce the Emission Guidelines (EG) promulgated for MSW landfills pursuant to Section 111(d) of the Act. Section 111(d) requires that the State submit the State Plan no later than 9 months after EPA promulgates the EG. On March 12, 1996, EPA promulgated the EG as 40 CFR part 60, subpart Cc. Accordingly, State Plans were due no later than December 12, 1996.

Under section 111(d) of the Act, the EPA established procedures whereby States submit plans to control existing sources of designated pollutants. A designated pollutant is defined as any air pollutant, emissions of which are subject to a standard of performance for new stationary sources, but for which air quality criteria have not been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the Clean Air Act. Accordingly, under the Clean Air Act, designated pollutants are regulated under section 111(d), criteria pollutants under section 108, and hazardous air pollutants (HAPS) under section 112. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, similar to the process required by section 110 of the Act (regarding State Implementation Plan (SIP) approval) which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance

standard (NSPS) that controls a designated pollutant, EPA establishes emissions guidelines in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the "designated facility" as defined at 40 CFR 60.21(b)). Thus, a State's section 111(d) plan for a designated facility must comply with the emission guideline for that source category as well as 40 CFR part 60, subpart B (40 CFR 60.23 through 60.26).

On March 12, 1996, EPA published Emission Guidelines (EG) for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759). (See 61 FR 9905-9944.) The pollutant regulated by the NSPS and EG is MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. To determine whether emissions control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.32c) for which construction, reconstruction or modification was commenced before May 30, 1991. The MSW landfill EG specify limits for landfill gas and require affected facilities to operate a control system designed to reduce collected NMOC concentrations by 98 weight-percent, or reduce the outlet NMOC concentration to 20 parts per million volume or less, using the test methods specified under section 60.754(d). Pursuant to 40 CFR 60.23(a), States were required to submit a plan for the control of the designated pollutant to which the EG applies within nine months after publication of the EG, in this case December 12, 1996. If there were no designated facilities in the State, then the State was required to submit a negative declaration by December 12, 1996.

Since the Summer of 1996, EPA has been involved in litigation over the requirements of the MSW landfill rule. On November 13, 1997, in accordance with section 113(g) of the CAA, EPA issued a document in the **Federal Register** (62 FR 60898) of a proposed settlement in *National Solid Wastes Management Association v. Browner, et al.*, No. 96-1152 (D.C. Cir). It is important to note that the proposed settlement does not vacate or void the existing landfill rule. Accordingly, the currently promulgated MSW landfill EG

and compliance times, 40 CFR part 60, subpart Cc, are used as a basis for EPA approval of the Allegheny County, Pennsylvania MSW Landfill 111(d) Plan.

On October 23, 1997, the Commonwealth of Pennsylvania submitted on behalf of Allegheny County, the County's Section 111(d) plan for MSW landfills for implementing EPA's MSW landfill EG. The following provides a brief discussion of the requirements for an approvable State plan for existing MSW landfills and EPA's review of Allegheny County's submittal through the Pennsylvania Department of Environmental Protection (PADEP) with respect to those requirements. More detailed information on the requirements for an approvable plan and Allegheny County's submittal can be found in the Technical Support Document (TSD) accompanying this rulemaking, which is available upon request from the EPA Regional Office listed in the ADDRESSES section of this notice.

## II. Review of the Allegheny County MSW Landfill Plan

EPA has reviewed the Allegheny County's section 111(d) plan for existing MSW landfills in the context of the requirements of 40 CFR part 60, subpart B and subpart Cc as follows:

### A. Identification of Enforceable State Mechanisms Selected by the State for Implementing the EG

The Allegheny County MSW landfill 111(d) plan will use County Health Department Regulations as the "enforceable mechanism" to meet the requirements of the MSW landfill EG. The landfill NSPS (subpart WWW) and EG (subpart Cc) have identical requirements, except for certain compliance times and requirements relating to the determination of prevention of significant deterioration (PSD) related NMOC emission rates. Accordingly, the County has incorporated by reference subpart WWW requirements into a new regulation (Article XXI, section 2105.73) that has applicability to both new and existing landfills. The regulation also includes the required increments of progress leading towards compliance for each affected (i.e., existing) landfill. The ACHD regulation meets the requirements of 40 CFR 60.24(a) for an enforceable mechanism.

### B. Demonstration of Legal Authority

The Allegheny County Health Department (ACHD) has the authority to make and enforce regulations to

implement this plan through the authority of the Pennsylvania Air Pollution Control Act, Local Health Administration Law, Second Class County Code, and the Rules and Regulations of the Allegheny County Health Department. Under these regulations the County can obtain information necessary to determine compliance, conduct inspections, and make emissions data available to the public. This meets the requirements of 40 CFR 60.26.

### C. Inventory of MSW Landfills in Allegheny County Affected by the EG

The ACHD identified three (3) existing MSW landfills that are subject to the 111(d) plan. There is a fourth landfill (i.e., USA Waste—Arnoni Brothers) that crosses into Allegheny County. However, this landfill is located primarily outside Allegheny County, and because of that, by mutual agreement, the Pennsylvania Department of Environmental Protection (PADEP) will include the landfill in its MSW landfill 111(d) plan and maintain all permits for the subject source. Existing MSW landfills are those that were constructed, reconstructed, or modified prior to May 30, 1991, and have accepted waste at any time since November 8, 1987, or that have additional capacity for future waste deposition. The submitted Allegheny County landfill inventory of sources meets the requirement of 40 CFR 60.25(a).

### D. Inventory of Emissions From MSW Landfills in Allegheny County

The County 111(d) plan contains information on estimated NMOC emission rates in tons per year (TPY) for each existing landfill. This meets the emission inventory requirements of 40 CFR 60.25(a).

### E. Emission Limitations for MSW Landfills

The ACHD MSW landfill regulation (i.e., Article XXI, section 2105.73) contains the emission limitations established in the EG. Existing landfills having design capacities greater than or equal to 2.5 million megagrams (Mg) by mass and 2.5 million cubic meters (m<sup>3</sup>) by volume and an NMOC emissions rate of 50 Mg/year or greater must install a gas collection and control system. This meets the requirement of 40 CFR 60.24(c) that the State plan includes emission standards that are no less stringent than the EG (except as specified in 40 CFR 60.24(f) which allows for less stringent emission limitations on a case-by-case basis if certain conditions are met). No

exception was requested by Allegheny County for any of its existing landfills.

#### *F. A State Process of Review and Approval of Site-Specific Gas Collection and Control System Design Plans*

The submitted Allegheny County 111(d) plan describes a process for the review and approval of site-specific design plans for gas collection and control systems. When an affected

source in Allegheny County is required to submit a collection and control plan, it will be notified of its requirement to submit an installation permit application. The ACHD process consists of (1) reviews of submitted permit application for completeness and technical adequacy, (2) procedures to request additional information, (3) an opportunity for public comment, and (4) the issuance or denial of a permit as

delineated in Article XXI, Chapters 2 and 3. The described process meets the requirements of 40 CFR 60.33c(b).

#### *G. Compliance Schedule*

The final compliance date and enforceable increments of progress under the 111(d) plan are tied to the effective date of the County's MSW landfill regulation (Article XXI, section 2105.73).

### REPORTING AND REQUIRED INCREMENTS OF PROGRESS

Action item	Compliance date
Submit Design Capacity Report .....	Within 90 days of the effective date of Article XXI Regulation.*
Submit NMOC Emission Rate Report .....	As above.
Submit Collection and Control Design Plan .....	Within 1 year after NMOC emissions $\geq$ 50 Mg/yr.
Award Contracts for Construction of Collection and Control System.	No later than 20 months after the date the NMOC emissions rate is first calculated to exceed or equal 50 Mg/yr.
Start on-site construction of the collection and control system ..	No later than 24 months after the date the NMOC emissions rate is first calculated to exceed or equal 50 Mg/yr.
Complete construction .....	No later than 28 months after the date the NMOC emissions rate is first calculated to exceed or equal 50 Mg/yr.
Final compliance date .....	No later than 30 months after the date the NMOC emissions rate is first calculated to exceed or equal 50 Mg/yr.

\*The regulation became effective on August 15, 1997.

A State section 111(d) plan must include a compliance schedule that owners and operators of affected MSW landfills must meet in complying with the requirements of the plan. 40 CFR 60.36c provides that planning, awarding of contracts, and installation of air emission collection and control equipment capable of meeting the EG must be accomplished within 30 months of the effective date of a State emission standard for MSW landfills. 40 CFR 60.24(e)(1) provides that any compliance schedule extending more than 12 months from the date required for plan submittal shall include legally enforceable increments of progress as specified in 40 CFR 60.21(h), including deadlines for submittal of a final control plan, awarding of contracts for emission control systems, initiation of on-site construction or installation of emission control equipment, completion of on-site construction/installation of emission control equipment, and final compliance. The Allegheny County MSW Landfill Regulation establishes interim and final compliance dates, as required by 40 CFR 60.24(e)(1).

#### *H. Testing, Monitoring, Record Keeping, and Reporting Requirements*

The ACHD MSW landfill regulation contains provisions for testing, monitoring, reporting, and recordkeeping. The provisions are the same as those in the NSPS, except for PSD emission rate estimates for NMOC. This exception applies only to existing landfills, and does not void any

applicable PSD requirement for new, reconstructed, or modified landfills. The ACHD landfill regulation meets the requirements of 40 CFR 60.34c, testing and monitoring, and 60.35c, reporting and recordkeeping requirements.

#### *I. A Record of Public Hearing on the State Plan*

The public hearing for the Allegheny County MSW landfill regulation, Article XXI, section 2105.73, was held May 19, 1997. The rule became effective August 15, 1997. The state provided evidence of complying with public notice and other hearing requirements, including a record of public comments received. The 40 CFR 60.23 requirement for a public hearing on the 111(d) plan has been met by Allegheny County.

#### *J. Provision for Annual State Progress Reports to EPA*

The County will submit to EPA on an annual basis a report which details the progress in the enforcement of the 111(d) plan in accordance with 40 CFR 60.25. The first progress report will be submitted to EPA one year after the approval of the Allegheny County MSW landfill regulation by EPA.

### III. Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving the Allegheny County MSW landfill 111(d) plan for the control of landfill gas emissions from affected facilities. Landfills located in other

Pennsylvania counties will be addressed in separate rulemaking. As provided by 40 CFR 60.28(c), any revisions to Allegheny County section 111(d) plan or associated regulations will not be considered part of the applicable plan until submitted by the Commonwealth of Pennsylvania in accordance with 40 CFR 60.28 (a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B, requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d) plan should relevant adverse or critical comments be filed. This rule will be effective June 9, 1998 without further notice unless the Agency receives relevant adverse comments by May 11, 1998.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the

public is advised that this rule will be effective on June 9, 1998 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Plan. Each request for revision to a State Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

#### IV. Administrative Requirements

##### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

##### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State Plan approvals under section 111 of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal State Plan approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning State Plans on such grounds. See *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

##### C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that

may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

##### D. Submission to Congress and the General Accounting Office

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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

##### E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 1998. Filing a petition for reconsideration by the Administrator of this final rule pertaining to the Allegheny County MSW landfill 111(d) plan 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 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Non-methane organic compounds, Methane, Municipal solid waste landfills, Reporting and recordkeeping requirements.

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

Dated: March 31, 1998.

**Stanley L. Laskowski,**

*Acting Regional Administrator, EPA Region III.*

For the reasons set out in the preamble, 40 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. 7401-7642.

##### Subpart NN—Pennsylvania

2. A new center heading, consisting of sections 62.9630, 62.9631, and 62.9632 is added to read as follows:

#### Landfill Gas Emissions From Existing Municipal Solid Waste Landfills [Section 111(d) Plan]

##### § 62.9630 Identification of plan.

Section 111(d) plan for municipal solid waste landfills and the associated Allegheny County Health Department Regulation in Article XXI, section 2105.73, as submitted on October 23, 1997, by the Commonwealth of Pennsylvania.

##### § 62.9631 Identification of sources.

The plan applies to all Allegheny County, Pennsylvania, existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991 and have 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.

##### § 62.9632 Effective date.

The effective date of the plan for municipal solid waste landfills is June 9, 1998.

[FR Doc. 98-9552 Filed 4-9-98; 8:45 am]

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