

any time other than a vessel operated by or for components, or other vessels authorized by Commander, Navy Region Southwest, or his/her designee.

(6) When security conditions dictate, Naval security forces may impose strict enforcement of stand-off distances within the restricted area. This enforcement will not prevent utilization of navigable channels, but will serve to control its use in order to protect vital National interests.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commander, Navy Region Southwest, and such agencies or persons as he/she may designate.

Dated: June 5, 2003.

Lawrence A. Lang,

Acting Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 03-16013 Filed 6-25-03; 8:45 am]

BILLING CODE 3710-92-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 138-4098a; FRL-7511-7]

Approval and Promulgation of Air Quality Implementation Plans; Federally Enforceable State Operating Permit Program; Allegheny County, Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Allegheny County portion of the Commonwealth of Pennsylvania State Implementation Plan (SIP). The revision consists of Allegheny County's state operating permit program. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 25, 2003 without further notice, unless EPA receives adverse written comment by July 28, 2003. 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: Comments may be submitted either by mail or electronically. Written comments should be mailed to Kristeen Gaffney, Acting Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street,

Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to gaffney.kristeen@epa.gov or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part V of the Supplementary Information section. 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; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Paul Arnold, Permits and Technical Assessment Branch at (215) 814-2194 or by e-mail at arnold.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 9, 1998 as amended on March 1, 2001, the Pennsylvania Department of Environmental Protection (PADEP), on behalf of the Allegheny County Health Department (ACHD), submitted a revision to the State Implementation Plan (SIP). The SIP revision consists of a state operating permitting program for sources of air pollution in Allegheny County. The SIP revision contains a regulation to implement a state operating permit program that provides a procedural and legal basis for the issuance of federally enforceable operating permits. Pennsylvania also requested approval of Allegheny County's state operating permit program pursuant to section 112(l) of the Clean Air Act.

Federally enforceable state operating permits (FESOPs) may be used to establish emission standards and other source-specific regulatory requirements for stationary sources of air pollution. FESOPs are frequently employed by permitting authorities to accomplish one or more of the following objectives: To designate a source as a synthetic minor source with regard to applicability of Federal requirements and standards, such as new source review; to combine a source's requirements under multiple permits into one permit; to implement emissions trading requirements; to cap the emissions of a source contributing to a

violation of any air quality standard; or, to establish a source-specific emission standard or other requirements necessary to implement the federal Clean Air Act or state air statutes and regulations.

On December 6, 1999, EPA proposed approval of the permit program (64 FR 68066). The ACHD subsequently revised its regulations on August 15, 2000, effective January 12, 2001. These revisions improve the ACHD permitting programs. EPA has withdrawn the previous proposal (64 FR 68066) and is approving the FESOP program submitted on November 9, 1998, as amended on March 1, 2001.

II. Evaluation of State Operating Permit Program Under Section 110 of the Act

On June 28, 1989, EPA amended the definition of "federally enforceable" to clarify that terms and conditions contained in state-issued operating permits are federally enforceable for purposes of limiting a source's maximum potential emission rates or potential-to-emit (PTE). This is true provided that the state's operating permit program is approved into the SIP under section 110 of the Clean Air Act as meeting certain conditions, and provided that the permit conforms to the requirements of the approved program. The conditions for EPA approval discussed in the June 28, 1989 notice establish five criteria for approving a state operating permit program. (See, 54 FR 27274-27286.) The following describes each of the criteria for approval of a state operating permit program for the issuance of federally enforceable operating permits for purposes of limiting a source's PTE and how the ACHD's SIP submittal satisfies those criteria.

Criterion 1. The state operating permit program *i.e., the regulations or other administrative framework describing how such permits are issued*) must be submitted to and approved by EPA as a SIP revision. On November 9, 1998 as amended on March 1, 2001, the Commonwealth of Pennsylvania submitted an administratively and technically complete SIP revision request for approval of Allegheny County Health Department's operating permit program. The permit program, Article XXI, Parts B and C, provide the framework for permit issuance.

Criterion 2. The SIP revision must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made in accordance with the approved operating permit program) and provide that permits which do not conform to

the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA. The permit program requires in Article XXI, section 2103.12.f.1 and 2103.10.c.3, the legal obligation to comply with terms and conditions of any permit.

Criterion 3. The state operating permit program must require that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any applicable limitations and requirements contained in the SIP, or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "federally enforceable" e.g. standards established under sections 111 and 112 of the Clean Air Act). Article XXI, section 2103.12.a.C. states that the conditions of the permit must provide for and require compliance with all applicable requirements. Section 2103.12.g states that all permits shall include standard emissions limit requirements. Additionally, if an alternative emission limit is provided, section 2103.g.2 requires that it must be demonstrated to be equivalent to or more stringent than the applicable limit.

Criterion 4. The limitations, controls, and requirements of the state operating permits must be permanent, quantifiable, and otherwise enforceable as a practical matter. Article XXI, section 2103.12.g states that the permit must include those operational requirements and limitations that assure compliance with all applicable requirements. This includes appropriate testing, monitoring, recordkeeping and reporting.

Criterion 5. The permits are issued subject to public participation. This means that the state agrees, as part of its program, to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be federally enforceable. This process must also provide for an opportunity for public comment on the permit applications prior to the issuance of the final permit. Article XXI, subchapters B and C provide thorough procedures for public participation which meet the public participation criteria. Sections 2102.05.c, 2103.11.e, 2102.04.h, 2103.11.h detail the public participation requirements.

Allegheny County Health Department's operating permit program

clearly satisfies the criteria for approval of a state program for the issuance of federally enforceable operating permits for purposes of limiting a source's PTE and is, therefore, approved as a SIP revision. The criteria discussed above relates to operating permit programs that are to approved as part of the SIP under section 110 of the Clean Air Act. In general, FESOP permit programs approved under a SIP relate only to those pollutants regulated under section 110, that is criteria pollutants. Pennsylvania is also seeking approval of ACHD's operating permit program under section 112 of the Clean Air Act for the purpose of limiting the PTE of hazardous air pollutants. The following is a discussion of EPA's criteria for approval of the permit program under section 112.

III. Evaluation of State Operating Permit Program Under Section 112 of the Act

As part of this action, EPA is approving, pursuant to section 112(l) of the Clean Air Act. Pennsylvania's request on behalf of the ACHD for authority to regulate hazardous air pollutants (HAPs) through the issuance of a federally enforceable state operating permit. Approval pursuant to section 112(l) of the Act would grant the ACHD authority to issue federally enforceable permits which limit PTE of HAPs. The EPA has determined that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989 **Federal Register** notice referenced above, are also appropriate for evaluating and approving operating permit programs under section 112(l). The June 28, 1989 notice does not address HAPs because it was written prior to the 1990 amendments to section 112 of the Act. Since the ACHD's operating permits program meets the five program approval criteria for both criteria and hazardous air pollutants, it may be used to limit the potential to emit of both criteria and hazardous air pollutants.

In addition to meeting the criteria discussed above, the ACHD's permit program for limiting potential to emit of HAPs must meet the statutory criteria for approval under section 112(l)(5) of the Act. This section allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standard or requirement; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with Section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

The EPA is approving the ACHD's state operating permit program pursuant to section 112(l) of the Act because the programs meet applicable approval criteria in section 112(l)(5) of the Act. Regarding the statutory criteria of section 112(l)(5) of the Act, EPA believes the ACHD's permit program contains adequate authority to assure compliance with section 112 requirements since the program does not waive any section 112 requirement(s). Sources would still be required to meet section 112 requirements applicable to non-major sources. Regarding adequate resources, ACHD has included in its state operating permit program provisions for the collection of fees from sources obtaining permits. Furthermore, EPA believes that the state operating permit program provides for an expeditious schedule for assuring compliance because they allow a source to establish a voluntary limit on potential to emit and avoid being subject to a federal Clean Air Act requirement applicable on a particular date. Nothing in the operating permit program would allow a source to avoid or delay compliance with a federal requirement if it fails to obtain the appropriate federally enforceable limit by the relevant deadline. The state operating permit program is consistent with the objectives of the section 112 program because its purpose is to enable sources to obtain federally enforceable limits on potential to emit to avoid major source classification under section 112. The EPA believes that this purpose is consistent with the overall intent of section 112.

IV. Final Action

EPA is approving a revision to the Allegheny County portion of the Commonwealth of Pennsylvania State Implementation Plan (SIP). The revision consists of Allegheny County's state operating permit program. EPA is approving this revision in accordance with the requirements of sections 110 and 112 of Clean Air Act.

The 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 and section 112(l) approval if adverse comments are filed. This rule will be effective on August 25, 2003 without further notice unless EPA receives adverse comment by July 28, 2003. 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. 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.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA138-4098 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

i. E-mail. Comments may be sent by electronic mail (e-mail) to [Branch Chief's e-mail address], attention PA138-4098. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and

made available in EPA's electronic public docket.

ii. Regulations.gov. Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to <http://www.regulations.gov>, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

V. 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. 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).

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 August 25, 2003. 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 Allegheny County Health Department FESOP, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 4, 2003.

Donald S. Welsh,

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 NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(209) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(209) Revisions to the Allegheny County, Pennsylvania Regulations for a federally enforceable state operating permit program, submitted on November 9, 1998 and March 1, 2001, by the Pennsylvania Department of Environmental Protection on behalf of the Allegheny County Health Department:

(i) Incorporation by reference.

(A) Letters of November 9, 1998 and March 1, 2001 from the Pennsylvania Department of Environmental Protection, on behalf of the Allegheny County Health Department, transmitting a federally enforceable state operating permit program.

(B) Addition of the following Allegheny County Health Department Rules and Regulations, Article XXI Air Pollution Control:

(1) Regulation 2101.05, Regulation 2103.12—effective March 31, 1998.

(2) Regulation 2103.01, Regulation 2103.11, Regulation 2103.13, Regulation 2103.15—effective October 20, 1995.

(3) Regulation 2103.14—effective January 12, 2001.

(ii) Additional Material—Remainder of the State submittal(s) pertaining to the revisions listed in paragraph (c)(209)(i) of this section.

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[FR Doc. 03-16024 Filed 6-25-03; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA-282-0389; FRL-7515-4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; 1-Hour Ozone Standard for San Diego, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to redesignate the San Diego County area to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is also approving a 1-hour ozone maintenance plan and motor vehicle emissions budgets as revisions to the San Diego portion of the California State Implementation Plan (SIP).

EFFECTIVE DATE: This action is effective July 28, 2003.

ADDRESSES: You can inspect copies of the docket for this action during normal business hours at EPA's Region IX office. Please contact John Kelly if you wish to schedule a visit. You can inspect copies of the submitted SIP materials at the following locations: U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

California Air Resources Board, 1001 I Street, Sacramento, California, 95812. San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1096.

The plan is also available electronically at: <http://www.sdapcd.co.san-diego.ca.us/reports/RedesigPlan.pdf>.

FOR FURTHER INFORMATION CONTACT: John J. Kelly, EPA Region IX, (415) 947-4151, or kelly.johnj@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us,” and “our” refer to EPA.

I. Background

On March 20, 2003 (68 FR 13653-13657), we proposed to redesignate the San Diego County area to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS). We also proposed to approve a 1-hour ozone maintenance plan and motor vehicle emissions budgets as revisions to the San Diego portion of the California State Implementation Plan. The maintenance plan and budgets are contained in the Ozone Redesignation Request and Maintenance Plan for San Diego County, which was adopted December 11, 2002 by the board of the San Diego County Air Pollution Control District (“SDCAPCD”) and submitted by the California Air Resources Board on December 20, 2002.

In our March proposal, we stated that final approval would be contingent upon our affirmative finding that the latest update to California's motor vehicle emissions model, known as EMFAC2002, is acceptable for purposes of SIP development and transportation conformity. On April 1, 2003, we published a **Federal Register** notice, stating our conclusion that the EMFAC2002 emission factor model is acceptable for use in SIP development and transportation conformity. (68 FRN 15720-15723)

The proposal contains detailed information on the SIP submittal and our evaluation of the submittal against applicable CAA provisions and EPA policies relating to 1-hour ozone maintenance SIPs, redesignations and budgets.

II. Public Comments

We received no public comment on our proposed action.

III. EPA Action

In this document we are finalizing our proposed approval of the Ozone Redesignation Request and Maintenance Plan for San Diego County (December 2002), as meeting applicable provisions for 1-hour ozone maintenance plans, under CAA sections 175A and 110(k)(3). As part of this action, we are finalizing approval for the following specific plan elements. We indicate on which page of our proposal the element is discussed.

(1) Approval of the emissions inventories for 2001, 2005, 2010, and 2014, under CAA section 172(c)(3) and 175A (68 FR 13654).