

Dated: December 17, 2003.

**Gerald M. Swanson,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[TN-200328; FRL-7596-6]

#### Approval and Promulgation of Air Quality Implementation Plans; Memphis-Shelby County; Revised Format for Materials Being Incorporated by Reference

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

**ACTION:** Final rule; notice of administrative change.

**SUMMARY:** EPA is revising the format of 40 CFR part 52 for materials submitted by Memphis-Shelby County that are incorporated by reference (IBR) into the State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by the local agency and approved by EPA.

This format revision will affect the "Identification of Plan" sections of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center, and the Regional Office. The sections of 40 CFR part 52 pertaining to provisions promulgated by EPA or local-submitted materials not subject to IBR review remain unchanged.

**EFFECTIVE DATE:** This action is effective December 29, 2003.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; Office of Air and Radiation Docket and Information Center, Room B-108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460, and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anne Marie Hoffman at the above Region 4 address, by phone at (404) 562-9074, or by electronic mail at [hoffman.anne@epa.gov](mailto:hoffman.anne@epa.gov).

**SUPPLEMENTARY INFORMATION:** The SIP is a living document which the State can

revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968) EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, IBR procedures and "Identification of Plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document. On June 30, 1999 EPA published a document in the **Federal Register** (64 FR 35009) beginning the new IBR procedure for Tennessee. In this document EPA is beginning the new IBR procedures for Memphis-Shelby County, Tennessee.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

#### Statutory and Executive Order Reviews

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.*).

The Congressional Review Act, 5 U.S.C. section 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 26, 2003.

**A. Stanley Meiburg,**

*Acting, Regional Administrator, Region 4.*

■ Chapter I, title 40, Code of Federal Regulations, is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority for citation for part 52 continues to read as follows:

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

#### Subpart RR—Tennessee

■ 2. Section 52.2220 is amended:

- a. By revising paragraph (b) and
- b. By revising the heading of the existing table in paragraph (c) to read "Table-1 EPA APPROVED TENNESSEE REGULATIONS" and adding a new table "Table-2 EPA APPROVED MEMPHIS-SHELBY COUNTY REGULATIONS" to the end of paragraph (c) to read as follows:

#### § 52.2220 Identification of plan.

\* \* \* \* \*

(b) *Incorporation by reference.* (1) Material listed in paragraph (c) of this section with an EPA approval date prior to December 1, 1998, was approved for Tennessee (Table 1 of the Tennessee State Implementation Plan) and January 1, 2003 for Memphis-Shelby County (Table 2 of the Tennessee State Implementation Plan) and paragraph (d)

of this section with an EPA approval date prior to December 1, 1998, was approved for Tennessee (Source-Specific Requirements) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in Table 2 of paragraph (c) of this section with EPA approval dates after January 1, 2003, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State and Local Implementation Plans listed in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA, Office of Air and Radiation Docket and Information Center, Room B-108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460.

(c) \* \* \*

TABLE 2.—EPA APPROVED MEMPHIS-SHELBY COUNTY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
<b>Division I Generally</b>				
Section 16-46 .....	Definitions .....	8/14/89	6/15/89, 54 FR 25456	
Section 16-47 .....	Abbreviations, Acronyms & Symbols .....	8/14/89	6/15/89, 54 FR 25456	
Section 16-48 .....	Words, Phrases Substituted in State Regulations Adopted by Reference.	8/14/89	6/15/89, 54 FR 25456	
Section 16-49 .....	Ambient Air Quality Standards .....	8/14/89	6/15/89, 54 FR 25456	
Section 16-50 .....	Open Burning .....	8/14/89	6/15/89, 54 FR 25456	
Section 16-51 .....	Severability of Parts of Articles .....	8/14/89	6/15/89, 54 FR 25456	
<b>Division II Enforcement</b>				
Section 16-56 .....	Violations of Chapter—Notice; Citation; Injunctive Relief .....	8/14/89	6/15/89, 54 FR 25456	
Section 16-57 .....	Penalties, Misdemeanor, Civil, Noncompliance .....	8/14/89	6/15/89, 54 FR 25456	
Section 16-58 .....	Variances .....	8/14/89	6/15/89, 54 FR 25456	
Section 16-59 .....	Emergency Powers of Health Officer .....	8/14/89	6/15/89, 54 FR 25456	
<b>Division III Air Pollution Control Board</b>				
Section 16-71 .....	Created; Membership; Term of Office; Jurisdiction; Hearings; Appeals.	8/14/89	6/15/89, 54 FR 25456	
<b>Division IV Source Emissions Standards</b>				
Section 16-77 .....	Construction and Operating Permits .....	8/14/89	6/15/89, 54 FR 25456	
Section 16-78 .....	Process Emissions Standards .....	8/14/89	6/15/89, 54 FR 25456	
Section 16-79 .....	Nonprocess Emission Standards .....	8/14/89	6/15/89, 54 FR 25456	
Section 16-80 .....	Volatile Organic Compounds .....	8/14/89	6/15/89, 54 FR 25456	

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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**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](mailto: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