

Latitude N	Longitude W
28°53'06" .....	90° – 1'30"

(ii) The six areas encompassed within a circle having a 500 meter radius around each single point mooring (SPM) at the port and centered at:

Latitude N	Longitude W
28°54'12" .....	90°00'37"
28°53'16" .....	89°59'59"
28°52'15" .....	90°00'19"
28°51'45" .....	90°01'25"
28°52'08" .....	90°02'33"
28°53'07" .....	90°03'02"

(3) The anchorage area within the safety zone is an area enclosed by the rhumb lines joining points at:

Latitude N	Longitude W
28°52'21" .....	89°57'47"
28°54'05" .....	89°56'38"
28°52'04" .....	89°52'42"
28°50'20" .....	89°53'51"
28°52'21" .....	89°57'47"

Dated: August 20, 2004.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety, Security, and Environmental Protection, Coast Guard.*

[FR Doc. 04-19731 Filed 8-27-04; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[PA 138-4230; FRL-7807-3]

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

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a revision to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). This SIP revision was submitted by the Pennsylvania Department of the Environment (DEP) on behalf of the Allegheny County Health Department (ACHD). The SIP revision consists of the Federally enforceable state operating permit (FESOP) program adopted by the ACHD. The intent of this revision is to establish a SIP-approved FESOP program to be implemented by the ACHD for sources located in Allegheny County, Pennsylvania. EPA is approving

this revision in accordance with the requirements of the Clean Air Act (CAA).

**EFFECTIVE DATE:** This final rule is effective on September 29, 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; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

**FOR FURTHER INFORMATION CONTACT:** Paul Arnold, (215) 814-2194, or by e-mail at [arnold.paul@epa.gov](mailto:arnold.paul@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Background

On June 26, 2003 (68 FR 37973), EPA published a notice of direct final rulemaking (DFR) approving a revision to the Allegheny County (the County) portion of the Commonwealth of Pennsylvania's SIP. The formal SIP revision was submitted by the Pennsylvania DEP on behalf of the ACHD on November 9, 1998, as amended on March 1, 2001. The revision consists of the County's regulation to implement a program which provides for the procedural and legal issuance of federally enforceable state operating permits (FESOPs) for sources of air pollution located in Allegheny County.

On June 26, 2003 (68 FR 37993), EPA also published a companion notice of proposed rulemaking (NPR) approving this SIP revision. It was stated in the June 26, 2003 DFR and NPR notices that this SIP revision would be effective on August 25, 2003 without further notice unless EPA received adverse written comments by July 28, 2003. If adverse comments were submitted, the final rule approving the SIP revision would be withdrawn. On July 28, 2003, adverse comments were submitted. On September 26, 2003 (68 FR 55469), EPA withdrew the final rule approving ACHD's FESOP program.

## II. Pennsylvania's SIP Revision for Allegheny County

EPA has evaluated the ACHD's operating permit program and determined that it satisfies the five criteria for approval of a FESOP program for purposes of limiting a source's potential to emit (PTE). *See* FR 27274, 27281-27284, June 28, 1989. EPA is therefore approving the Pennsylvania DEP's request that the ACHD's regulation be made part of the Pennsylvania SIP under section 110 of the CAA, 42 U.S.C. 7410. The Pennsylvania DEP also requested approval of ACHD's program pursuant to section 112(l) of the CAA, 42 U.S.C. 7412(l). EPA determined that the County's program is consistent with the objectives and requirements of section 112, 42 U.S.C. 7412, which governs the regulation of hazardous air pollutants (HAP). It enables sources to apply for federally enforceable limits on their PTE to avoid major source classification under section 112. The details of EPA's evaluation of the ACHD's regulation are provided in the notice published on June 26, 2003 (68 FR 37973) and shall not be restated here.

Today's action does not affect the ACHD's separate title V operating permit program codified in Allegheny County Health Department, Rules and Regulations, Article XXI, Part C, which was developed by the ACHD and approved by EPA under title V of the CAA (title V), 42 U.S.C. 7661-7661f, and EPA's implementing regulations in 40 CFR part 70 (part 70). *See* 66 FR 55112, Nov. 1, 2001. The title V operating permit program applies to major stationary sources of air pollution and certain other sources. By contrast, a FESOP program may be and often is used to establish emission standards and other source-specific regulatory requirements for stationary sources of air pollution that enable them to remain "synthetic minor" sources that are not subject to major source requirements, including title V permitting requirements. Thus, the ACHD's FESOP program generally will apply to sources that are not covered by the ACHD's title V program.<sup>1</sup>

## III. Public Comments and EPA Responses

On July 28, 2003, adverse comments were submitted to EPA regarding its proposed approval of ACHD's FESOP

<sup>1</sup> In the event that a source covered by a FESOP becomes a major source subject to title V permitting requirements, the emission limits and other requirements set forth in the FESOP would be incorporated into the title V operating permit as required by title V, part 70 and the ACHD's corresponding authorities.

program. A summary of those comments and EPA's responses follows.

*Comments:* The commentor states that it is fully aware of the many positive attributes of the Allegheny County Health Department's Air Enforcement and Compliance program, and that as a general rule supports delegating to the County enforcement authority for air quality regulatory implementation. The commentor, however, states its opposition to full approval of the County's FESOP program at this time is based on concern over the ability of the ACHD to carry out the regulatory tasks set forth therein. The commentor first maintains that the ACHD's FESOP program must, in addition to satisfying EPA's five criteria for approval of a FESOP program (see 54 FR 27274, 27281–27284), meet the minimum requirements for approvable State or local title V program submissions listed in 40 CFR 70.4(b). In particular, the commentor cites the requirement that a part 70 program submission include “\* \* \* a statement that adequate personnel and funding have been made available to develop, administer, and enforce the program” [40 CFR 70.4(b)(8)]. The commentor states that the requirements of § 70.4(b) are binding on “partial programs” such as ACHD's by virtue of § 70.4(c)(2) as many of the sources which will obtain FESOP's under the ACHD's program will do so for the express purpose of avoiding Title V applicability. The commentor therefore believes that a state or local FESOP program approval determination must also take into account the elements of § 70.4.

The commentor also expresses concern as to whether the ACHD satisfies the requirement for approval of a FESOP program which states that all limitations, controls and requirements imposed in a permit must be permanent, quantifiable and enforceable as a practical matter. The commentor asserts that if an enforcement and compliance program is not performing at a satisfactory level, then it is not accurate to represent that permits are enforceable “as a practical matter.” As a basis for this comment, the commentor cites to a report entitled “Review of Allegheny County Health Department's Air Enforcement & Compliance Program” issued by EPA Region III's Office of Air Enforcement and Permits Review in June, 2003. The commentor discusses the report's findings with respect to: the adequacy of the legal resources available to the ACHD to ensure adequate enforcement; the apparent lack of enforcement activity by the ACHD; the ACHD's failure to fully comply with EPA reporting requirements, which the

commentor asserts is critical to EPA's and the public's ability to oversee the ACHD's enforcement activities; the ACHD's organizational structure; and the lack of the ACHD's follow-up on stack tests. The commentor also incorporates by reference the additional problem areas identified by EPA in the report.

In addition, the commentor raises two comments concerning EPA's approval of the Pennsylvania DEP's request that EPA grant the ACHD authority pursuant to section 112(l) of the CAA to limit sources' potential to emit HAP through the issuance of FESOPs. The commentor asserts that two of the section 112(l) requirements for EPA approval of a FESOP program for HAP purposes “provide a challenge” in the case of the ACHD's program. First, the commentor asserts that EPA's conclusion that the ACHD has adequate resources due to permit fees “seems questionable in light of EPA's own final report on ACHD's enforcement and compliance program.” Second, the commentor asserts that shortcomings in the ACHD's program, such as the “dearth of enforcement, failure to identify violators, and failure to supply [Pennsylvania] DEP and EPA with all necessary records from which to discern facility compliance \* \* \* run contrary to” section 112(l)(5)'s requirement that a program is “otherwise likely to satisfy the objectives of the Act.”

Rather than proceed with full approval, the commentor comments that EPA could grant a conditional approval of the County's FESOP program. The commentor urges EPA to impose conditions upon ACHD, that would provide for a twelve-month or longer period, as deemed appropriate by EPA, within which to demonstrate substantial improvement across a range of areas in ACHD's air enforcement and compliance program.

*EPA's Response:* EPA disagrees with the commentor's first assertion that “\* \* \* a statement that adequate personnel and funding have been made available to develop, administer, and enforce the program” as required by 40 CFR 70.4(b)(8) is required in order for EPA to approve the Commonwealth of Pennsylvania's request that ACHD's FESOP regulation be made part of the Pennsylvania SIP.—See *Wall v. EPA*, no. 00–4010, slip op. at 21–24 (6th Cir. September 11, 2001). Although Clean Air Act sections 110(a)(2)(E) and 110(a)(2)(C) do contain these provisions, section 110(a)(2)(H) is the statutory provision which governs requirements for individual plan revisions which States may be required to submit from time to time. There are no cross-

references in section 7410(a)(2)(H) to either 7410(a)(2)(E) or 7410(a)(2)(C). Therefore, EPA concludes that Congress did not intend to require States to submit an analysis of adequate funding and enforcement with each subsequent and individual SIP revision submitted under the authority of section 110(a)(2)(H). Once EPA approves a State's SIP as meeting section 110(a)(2), EPA is not required to reevaluate that SIP for each new revision to the plan submitted to meet requirements in other sections of the Act. The Commonwealth of Pennsylvania had previously received approval of its 110(a)(2) SIPs. See discussion in the Cincinnati redesignation of this issue (65 FR 37879, 37881–37882) (June 19, 2000). The sixth circuit has upheld EPA's interpretation in *Wall v. EPA*, supra, at 20–21. Therefore, EPA concludes that Congress did not intend to require States to submit an analysis of adequate funding and enforcement with each subsequent and individual SIP revision submitted under the authority of section 110(a)(2)(H).

EPA further disagrees that the report entitled “Review of Allegheny County Health Department's Air Enforcement & Compliance Program” is grounds to determine that the ACHD's FESOP regulation fails to satisfy the criteria for approval of a FESOP program as a revision to the Pennsylvania SIP. In its previous notices, 68 FR 37973 and 68 FR 37993, EPA established that ACHD's regulation satisfies all five criteria used to determine that a regulation has the necessary components to provide the procedural and legal basis for the issuance of federally enforceable state operating permits. The level and performance of Allegheny County's enforcement as a whole, while perhaps affecting Allegheny's permit issuance program, is not the primary focus of this revision to the Pennsylvania SIP. Rather the primary focus is the establishment of regulation for the Allegheny County portion of the Pennsylvania SIP for a state run permit program which is federally enforceable.

EPA also disagrees with the commentor's assertion that the ACHD's FESOP program is a “partial program” under 40 CFR 70.4(c)(2). The requirements of 40 CFR 70.4(b), including the requirement of 40 CFR 70.4(b)(8), are minimum requirements for title V operating permit programs that EPA approves pursuant to title V and part 70. However, FESOP programs are not title V programs and are not subject to the requirements of title V and part 70. As EPA explained in the June 28, 1989 **Federal Register** notice, FESOP programs are required to meet

five criteria for EPA approval, and they are approved as part of a SIP pursuant to EPA's authority under title I of the Act, including section 110. The commentator argues that the ACHD's FESOP program is a "partial program" under 40 CFR 70.4(c)(2), because many sources will obtain FESOPs in order to avoid title V applicability. However, the commentator misunderstands the nature of a partial program under title V. It is true that the ACHD's title V operating permit program is a partial program. Yet, in the case of the ACHD's title V operating permit program, the term "partial" is a geographic reference which indicates that the ACHD is the title V permitting authority for sources in Allegheny County, while the Pennsylvania DEP or another local agency is the title V permitting authority elsewhere in Pennsylvania. See 66 FR 55112, Nov. 1, 2001. This means that all of the title V sources in Allegheny County—in other words, all of the sources in the County that are subject to title V permitting requirements—are required to obtain a title V operating permit from the ACHD. As indicated previously, the ACHD's FESOP program approved today will be a separate permitting program that is part of the SIP. It will not be used to fulfill the requirements of title V and part 70, and therefore it is not subject to those requirements. Moreover, sources that lawfully obtain FESOPs to avoid title V applicability are not subject to the title V program so long as they operate in compliance with their FESOPs.

In addition, EPA's "ACHD 105 Grant Midyear Report Executive Summary," dated May 24, 2004, identifies significant improvements in performance and personnel resources since the issuance of the 2003 report. The 105 Grant Midyear Report Executive Summary states, "The ACHD is to be commended for its efforts to address the issues raised in EPA's 'Review of Allegheny County Health Department's Air Enforcement & Compliance Program' report. Since the issuance of the June 2003 report, the ACHD has implemented several of its recommendations. The most notable being the hiring of the Chief of the Enforcement Section and an attorney. The ACHD has identified and addressed four new HPVs [High Priority Violators] in conformance with the *Timely and Appropriate to High Priority Violators Policy*. Additionally, the ACHD provides copies of NOV's [Notices of Violations] and orders pertaining to HPVs in a timely matter." EPA believes ACHD has made considerable progress in addressing the concerns raised in the

2003 ACHD Air Enforcement and Compliance Report.

Finally, for the reasons stated in this notice and in our June 26, 2003 DFR and NPR notices, EPA disagrees with the commentator's assertions that EPA should grant conditional approval of this SIP revision. There are no regulatory revisions or additions that need to be made to the ACHD's regulation. EPA has determined that Allegheny County's operating permit regulation, as submitted by the Commonwealth of Pennsylvania, meets the five criteria for full approval as a revision to the Pennsylvania SIP and, with respect to HAP, meets the requirements of section 112(l) of the CAA.

#### IV. Final Action

EPA is approving the SIP revision that was submitted by the Pennsylvania DEP on behalf of the ACHD on November 9, 1998, as amended on March 1, 2001. The revision consists of the ACHD's regulation which provides for the procedural and legal issuance of federally enforceable state operating permits (FESOPs) for sources of air pollution located in Allegheny County.

#### 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 Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 2004. Filing a petition for reconsideration by the Administrator of this final rule approving ACHD's regulation for a FESOP program 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 civil or criminal enforcement proceedings. (See section 307(b)(2), 42 U.S.C. 7607(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: August 18, 2004.

**Richard J. Kampf,**

*Acting Regional Administrator, Region III.*

### 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 for a federally enforceable state operating permit program applicable in Allegheny County, Pennsylvania 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 pertaining to the revisions listed in paragraph (c)(209)(i) of this section.

[FR Doc. 04–19715 Filed 8–27–04; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Region II Docket No. R02–OAR–2004–NJ–0002, FRL–7807–6]

### Approval and Promulgation of Implementation Plans; New Jersey; Revised Motor Vehicle Transportation Conformity Budgets

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a revision to the New Jersey State Implementation Plan (SIP) transportation conformity budgets for carbon monoxide and ozone precursors. These budgets are being revised to reflect updated modeling estimates, as well as updated vehicle registration data. The intended effect of this action is to approve a SIP revision that will help the State continue to maintain the carbon monoxide National Ambient Air Quality Standards (NAAQS) and to continue progress in attaining the 1-hour NAAQS for ozone in the Northern New Jersey-New York-Long Island nonattainment area (NAA).

**DATES:** This rule will be effective August 30, 2004.

**ADDRESSES:** Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460. New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

**FOR FURTHER INFORMATION CONTACT:**

Reema Persaud, Air Programs Branch,

Environmental Protection Agency, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4249.

### SUPPLEMENTARY INFORMATION:

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  - A. Emission Inventories and Budgets Revised With MOBILE6
- IV. Conclusions
- V. Statutory and Executive Order Reviews

### I. Background

On June 28, 2004 (69 FR 36035), EPA published a notice of proposed rulemaking regarding a SIP revision submitted by the State of New Jersey for its portions of the two severe ozone NAAs—the New York-Northern New Jersey-Long Island Area and the Philadelphia-Wilmington-Trenton Area. For purposes of this action, these areas will be referred to as the Northern New Jersey NAA and the Trenton NAA, respectively. The proposal also addressed statewide revisions to the CO maintenance plan.

The SIP revision was proposed under a procedure called parallel processing, whereby EPA proposes a rulemaking action concurrently with a state's procedures for amending its regulations. The proposed SIP revision was initially submitted to EPA on March 15, 2004 and the final SIP revision was formally submitted on May 21, 2004. A detailed description of New Jersey's submittal and EPA's rationale for the proposed action were presented in the June 28, 2004 notice of proposed rulemaking and will not be restated here.

New Jersey made one administrative change from the proposal based on a comment they received. The written comment suggested that carbon monoxide budgets for all of the unclassified areas contained in Appendix I of the State's Proposed SIP submittal be included in tables within the main document. The May 21, 2004 document submitted by the State incorporated this change. Table 1 in this final approval notice incorporates the unclassified area budgets previously contained in Appendix I of the State's proposal.

### II. Comment

EPA received one comment on the June 28, 2004 proposal. The comment was submitted on July 28, 2004. The commentor stated a general opposition which did not address a specific aspect of the proposed plan.

**EPA Response:** EPA requires the use of the most recent MOBILE model when performing transportation conformity