OHIO—SO_2—Continued

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Area bounded by the following lines—North—Interstate 76, East—Route 93, South—Vanderhoof Road, West—Summit County Line				X
Area bounded by the following lines—North—Bath Road (48 east to Route 8, Route 8 north to Barlow Road, Barlow Road east to county line, East—Summit/Portage County line, South Interstate 76 to Route 93, Route 93 south to Route 619, Route 619 east to County line, West-Summit/Medina County line	[2]	[2]	[2]	[2]
Entire area northwest of the following line Route 80 east to Route 91, Route 91 north to the County line				X[3]
The remainder of Summit County				X[4]
Trumbull County				X
Washington County				X
Waterford Township				X
The remainder of Washington County				X
All other counties in the State of Ohio				X[1]

[1] EPA designation replaces State designation.
[2] This area remains undesignated at this time as a result of a court remand in PPG Industries, Inc. vs. Costle, 630 F.2d 462 (6th Cir. 1980).
[3] This area was affected by the Sixth Circuit Court remand but has since been designated.
[4] The area was not affected by the court remand in PPG Industries, Inc. vs. Costle, 630 F.2d 462 (6th Cir. 1980).

[FR Doc. 99–6256 Filed 3–16–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA–107–4066c; FRL–6311–3]

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: Final rule.

SUMMARY: EPA is approving a municipal solid waste landfill (MSW) 111(d) plan submitted by the Commonwealth of Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Allegheny County Health Department (ACHD) for the purpose of controlling MSW landfill gas emissions from existing facilities. The plan was submitted to fulfill requirements of the Clean Air Act (CAA). The Allegheny County plan establishes landfill gas emissions limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

EFFECTIVE DATE: This final rule is effective on April 16, 1999.

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 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, P.E., at (215) 814–2190, or by e-mail at topsale.jim@.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On April 10, 1998 (63 FR 17683), EPA published a direct final rule for approval of the MSW landfill 111(d) plan submitted by the PADEP on behalf of ACHD. EPA concurrently published a proposed rule on April 10, 1998 (63 FR 17793) to allow interested parties to submit comments. During the public comment period, EPA received one adverse comment from Browning-Ferrris Industries, Inc. As a result, EPA withdrew the direct final rule granting approval of the MSW landfill 111(d) plan for Allegheny County on June 18, 1998 (63 FR 33250).

On June 16, 1998, EPA published in the **Federal Register** (63 FR 32743) a direct final action which amends, corrects errors, and clarifies the regulatory text of the ''Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills,'' which was promulgated on March 12, 1996. The Background section of the amended rule (63 FR 32744) states, ''These changes do not significantly modify the requirements of the regulation.'' No adverse comments were received on the amended landfill rule, and as a result, it became effective on August 17, 1998.

II. Response to Public Comments

During the public comment period offered on the approval of the Allegheny County MSW landfill 111(d) plan, EPA received an adverse comment from Browing-Ferris Industries, Inc. opposing approval of the Allegheny County portion of the Commonwealth of Pennsylvania's plan. The following paragraphs present the commenter's remarks and EPA's responses.

Comment: On May 12, 1998, the commenter noted that the effective date specified in ''Section G. Compliance Schedule'' of the direct final rule can be no sooner than the date of **Federal Register** publication, April 10, 1998. The direct final rule states: ''The final compliance date and enforceable increments of progress under the 111(d) plans are tied to the effective date of the County's MSW landfill regulation (Article XXI, section 2105.73).'' The table ''Reporting and Required Increments of Progress,'' which appears in Section G, indicates that the first compliance/reporting deadline pursuant to the emission guidelines (EG) is ''Within 90 days of the effective date of Article XXI Regulation*.'' The footnote (*) states that ''The regulation became effective on August 15, 1997.'' According to the commenter, use of the state/county effective date to trigger subsequent requirements is inconsistent with previous EPA approvals under 40 CFR Part 60, Subpart Cc, and with proposed revisions to the landfill new source performance standards/emission guidelines (NSPS/EG). Also, the Pennsylvania Air Pollution Control Act

(Section 4004.2(b)) prohibits the state from establishing more stringent requirements than the federal government. The commenter identified four EPA 111(d) plan approvals, excluding Allegheny County, to support his argument that the EG ''effective date'' is not established by the effective date of the state/local regulation. Furthermore, the commenter noted that a Title V application should not be due until one year plus 90 days from April 10, 1998, and that installation/operation of an EG compliant gas collection/control system should not be required until three years plus ninety days from April 10, 1998. To support his position, the commenter referenced the pending amended EG provision, 40 CFR 60.32c(c), relating to Title V permits, that was negotiated under the lawsuit settlement over the MSW Landfill NSPS/EG [*National Solid Waste Management Association* v. *Browner* No. 96–1152 (D.C. Cir)].

EPA's Response: It appears the commenter has misinterpreted the requirements of the EG, as amended, and EPA's approval with respect to compliance schedule requirements for Allegheny County's 111(d) plan landfills. Any ambiguity in the text of the direct final rule published on April 10, 1998 that may have caused confusion should now be clarified with the discussion below.

A state's 111(d) plan must include a compliance schedule that landfill owners/operators must meet. Most states have proposed that the initial design capacity and NMOC emissions rate report must be submitted 90 days after EPA approval of their 111(d) plans. The promulgated landfill EG require the same reporting and record keeping as the related NSPS. However, the EG do not stipulate when the initial NMOC emissions and design capacity reports are due for existing landfills. Even if a date were clearly specified in the EG, states can exercise their own judgement as to when the initial reporting requirement must be met, providing the requirement is no less stringent than that in the EG. EPA has no documentation that the Allegheny County landfill regulation violates any of the requirements of the Pennsylvania Air Pollution Control Act (Section 4004.2(b)). Based on our review of the public participation documents submitted with Allegheny County's 111(d) plan, the issues now raised by the commenter in his May 12, 1998 comments to EPA were not raised by that commenter, or anyone else, during the 111(d) plan public comment period. Furthermore, none of these comments or concerns were identified in the PADEP submittal of the Allegheny County MSW landfill 111(d) plan to EPA.

Although the 111(d) plan increments of progress are tied to the effective date of the County's MSW landfill regulation, the controlling date that triggers and defines the required increments of progress dates, from the time of submittal of the design plan to final source compliance, is the date when the NMOC emissions rate is first calculated to exceed 50 Mg/yr. This is clearly noted in ''Section G. Compliance Schedule'' of the direct final rule. Nevertheless, the design capacity and initial NMOC emission rate reports were due within 90 days of the effective date (i.e., August 15, 1997) of the Article XXI Regulation.

EPA has been involved in litigation over the requirements of the MSW landfill EG and NSPS since the summer of 1996. On November 13, 1997, EPA issued a notice of proposed settlement in *National Solid Wastes Management Association* v. *Browner* No. 96–1152 (D.C. Cir), in accordance with Section 113(g) of the Act. (See 62 FR 60898.) It is important to note that the proposed settlement did not vacate or void the March 12, 1996 MSW landfill EG or NSPS. Pursuant to the proposed settlement agreement, EPA published a direct final rulemaking on June 16, 1998, in which EPA amends 40 CFR Part 60, Subparts Cc and WWW, to add clarifying language, make editorial amendments, and to correct typographical errors. One particular clarification addresses the commenters concern regarding the date when Title V applications are due. Specifically, 60.32c(c), as amended, makes it clear that EG sources will not become subject to the requirement to apply for a Title V permit until 90 days after the effective date of EPA's approval of a state's 111(d) plan. (See 63 FR 32743–32753, 32783–32784.) EPA regulations at 40 CFR 60.23(a)(2) provide that a state has nine months to adopt and submit any necessary state plan revisions after publication of a final revised emission guideline document. Thus, states are not yet required to submit state plan revisions to address the June 16, 1998 direct final amendments in the EG. In addition, as stated in the June 16, 1998 rule's preamble, the changes to 40 CFR Part 60, Subparts Cc and WWW, do not significantly modify the requirements of those subparts. (See 63 FR 32744.) Accordingly, the MSW landfill EG published on March 12, 1996, was used as a basis by EPA for review of state 111(d) plan submittals.

III. Final Action

Based upon the rationale discussed in the proposed and related direct final rulemaking (63 FR 17793 and 17683, April 10, 1998), EPA is approving the Allegheny County portion of the Pennsylvania MSW landfill 111(d) plan. As provided by 40 CFR 60.28(c), any revisions to the Allegheny County portion of the plan or associated regulations will not be considered part of the applicable plan until submitted by PADEP in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA .

IV. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of Section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If

the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Pursuant to section 605 (b) of the RFA I certify that this rule will not have a significant economic impact on a substantial number of small entities. This Federal action approves pre-existing requirements under Federal, State, or Local law and imposes no new requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

F. 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 annual costs to State, local, or tribal governments in the aggregate; or to a 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 annual 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.

G. 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).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve the Allegheny County portion of the Pennsylvania MSW landfill 111(d) plan must be filed in the United States Court of Appeals for the appropriate circuit by May 17, 1999. 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 62

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

Dated: March 9, 1999.

Thomas Voltaggio,

Acting, Regional Administratopr, Region III.

40 CFR Part 62, Subpart NN, is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Subpart NN is amended by adding a new center heading and §§ 62.9630, 62.9631, and 62.9632 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, § 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 that has accepted waste at any time since November 8, 1987 or that has 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 April 16, 1999.

[FR Doc. 99–6500 Filed 3–16–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300530A; FRL–6052–3]

RIN 2070–AB78

Potato Leaf Roll Virus Resistance Gene (also known as orf1/orf2 gene); Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendment.

SUMMARY: EPA is issuing a technical amendment to a tolerance exemption it published in the **Federal Register** on August 15, 1997 (62 FR 43650). This technical amendment changes the name of the active ingredient from ''Replicase Protein of Potato Leaf Roll Virus and the genetic material necessary for it's production'' to ''Potato Leaf Roll Virus Resistance Gene (also known as orf1/orf2 gene) and the genetic material necessary for it's production.'' This action is requested by Monsanto Company, who originally filed the pesticide petition requesting an exemption from the requirement of a tolerance for residues of the biological pest control agent under the name ''Replicase Protein of Potato Leaf Roll Virus and the genetic material necessary for it's production.'' The change was suggested by the Agency as a result of the review of data which indicated that the former active ingredient, Replicase Protein of Potato Leaf Roll Virus and the genetic material necessary for it's production, was not solely responsible for providing the plant product with its' pesticidal properties (i.e., resistance to infection by the Potato Leaf Roll Virus). Changing the active ingredient name in no way changes the findings, determinations, or effects of the originally issued final rule published in the **Federal Register** of August 15, 1997 (62 FR 43650).

DATES: This regulation is effective March 17, 1999. Objections and requests for hearings must be received by EPA on or before May 17, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300530A], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees) and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–00530A], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300530A]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Hollis, Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: 9th fl., Crystal Mall #2 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)308-8733. e-mail: hollis.linda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 25, 1997 (62 FR 34283-34286) (FRL–5728–4), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide tolerance petition by Monsanto Company, St. Louis, Missouri. This notice included a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the Food Quality Protection Act (FQPA) of 1996. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the biological pest control agent Replicase Protein of Potato Leaf Roll Virus and the genetic material necessary for it's production in or on all food commodities. EPA published a final rule establishing a tolerance exemption in the **Federal Register** on August 15, 1997 (62 FR 43650) (FRL–5738–3) amending 40 CFR 180.1183. An amendment to this petition and thus the final rule establishing a tolerance exemption, was requested by Monsanto Company to change the name of the active ingredient from the above to Potato Leaf Roll Virus Resistance Gene (also known as orf1/orf2 gene) and the genetic material necessary for it's production. This request came at the suggestion of the Agency as a result of the review of data which indicated that the former active ingredient, ''Replicase Protein of Potato leaf Roll Virus and the genetic material necessary for it's production,'' was not solely responsible for providing the plant with it's pesticidal properties (i.e., resistance to infection by the Potato Leaf Roll Virus). A change in the name of the active ingredient will in no way amend the text of the original petition or EPA's findings, conclusions or determinations as described in the August 15, 1997 Final Rule (62 FR 43650). Additionally, a change in the name of the active ingredient does not affect and/or compromise the Agency's original dietary risk exposure assessment which concluded that the active ingredient posed no dietary risk of concern under normal conditions. Therefore, this technical amendment only changes in the name of the active ingredient. All other text remains the same as in the final rule of August 15, 1997 (62 FR 43650) which amended 40 CFR 180.1183. For the reasons set forth above, EPA believes that it is approprate to issue this rule as a technical amendment. Because this amendment makes a minor corrective change to an existing regulation and has no substantive impact, EPA has determined that good cause exists to dispense with the notice and comment provisions of the Administrative Procedure Act (APA)