

docket for inspection or copying where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Effective 7:30 a.m. to 11:30 a.m. on September 28, 2003, § 117.2395 is added to read as follows:

#### § 117.2395 Upper Mississippi River.

Rock Island Railroad and Highway Drawbridge, Mile 482.9, Upper Mississippi River.

From 7:30 a.m. to 11:30 a.m. on September 28, 2003 the drawspan need not open for river traffic and may be maintained in the closed-to-navigation position.

Dated: September 2, 2003.

**R.F. Duncan,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 03–23183 Filed 9–10–03; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[PA189–4300; FRL–7556–4]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Liberty Borough PM<sub>10</sub> Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a request for Pennsylvania to redesignate the Liberty Borough area of Allegheny County, Pennsylvania (the Liberty Borough area) from nonattainment to attainment for the national ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns

(PM<sub>10</sub>). EPA is also approving a maintenance plan for the Liberty Borough area. Both the redesignation request and maintenance plan were submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Allegheny County Health Department (ACHD). Approval of the maintenance plan, as a revision to the Pennsylvania State Implementation Plan (SIP), puts a plan in place for maintaining the PM<sub>10</sub> standard for the next ten years in the Liberty Borough area. This action is being taken in accordance with the Clean Air Act (CAA).

**EFFECTIVE DATE:** This final rule is effective on October 14, 2003.

**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; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

**FOR FURTHER INFORMATION CONTACT:** Ruth Knapp, (215) 814–2191, or by e-mail at [knapp.ruth@epa.gov](mailto:knapp.ruth@epa.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. Background

On July 18, 2003 (68 FR 42657), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed to redesignate the Liberty Borough area of Allegheny County, Pennsylvania (the Liberty Borough area) from nonattainment to attainment for the national ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns (PM<sub>10</sub>) and also proposed approval of a maintenance plan for the Liberty Borough area as a SIP Revision. The formal SIP revision along with the redesignation request was submitted by PADEP on behalf of the ACHD on October 28, 2002. Other specific requirements of this action pertaining to the redesignation of the Liberty Borough area to attainment for the PM<sub>10</sub> NAAQS and approval of the maintenance plan as a SIP revision, and the rationale for

EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

#### II. Final Action

EPA is redesignating the Liberty Borough area of Allegheny County, Pennsylvania from nonattainment to attainment for the national ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns (PM<sub>10</sub>) and is also approving a maintenance plan for the Liberty Borough area as a SIP Revision to the Pennsylvania SIP.

#### III. 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 (Public Law 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 November 10, 2003. Filing a petition for reconsideration by the Administrator of this final rule which redesignates the Liberty Borough area to attainment for PM<sub>10</sub> and approves a maintenance plan for the Liberty Borough area 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**

**40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements,

**40 CFR Part 81**

Air pollution control, National parks, Wilderness areas.

Dated: September 2, 2003.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

■ 40 CFR parts 52 and 81 are 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)(215) to read as follows:

**§ 52.2020 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(215) The PM<sub>10</sub> Redesignation and Maintenance Plan for the Liberty Borough area of Allegheny County,

Pennsylvania nonattainment area submitted on October 28, 2002 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of October 28, 2002 from the Pennsylvania Department of Environmental Protection transmitting the redesignation request and maintenance plan for the PM<sub>10</sub> nonattainment area in the Liberty Borough area of Allegheny County, Pennsylvania.

(B) Maintenance Plan for the Liberty Borough PM<sub>10</sub> nonattainment area consisting of Part IV, "Maintenance Plan—Redesignation Criterion 4"; Part I, "Attainment of the Standard—Redesignation Criterion I," Section B, Figure 3a—"Countywide Network of PM<sub>10</sub> Monitors, (Current)"; Section C "Modeled Attainment"; Part VI "Documentation of Administrative Procedures," Section F "Certification of Approval and Adoption"; Appendix B : "Attainment Inventory"; Appendix C: "Mon-Fayette Expressway Alignment"; Appendix D: "Employment Forecasts"; Appendix E: "Census and Population Forecasts," dated October 4, 2002 and effective September 14, 2002.

(ii) Additional material.

(A) Remainder of the October 28, 2002 State submittal(s) pertaining to the revisions listed in paragraph (c)(215)(i) of this section.

(B) Additional material submitted by the State on June 20, 2003 which consisted of minor corrections to the PM<sub>10</sub> ambient air quality data included in the redesignation request.

**PART 81—[AMENDED]**

■ 1. The authority citation for Part 81 continues to read as follows:

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

**Subpart C—Section 107 Attainment Status Designations**

■ 2. In § 81.339, the table for "Pennsylvania—PM-10" is amended by revising the entry for Allegheny County to read as follows:

**§ 81.339 Pennsylvania.**

\* \* \* \* \*

**PENNSYLVANIA—PM-10**

Designated area	Designation		Classification	
	Date	Type	Date	Type
Allegheny County: The area including Liberty, Lincoln, Port Vue, and Glassport Boroughs and the City of Clairton.	10/14/03	Attainment.		

PENNSYLVANIA—PM—10—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * * *	*	*	*	*

\* \* \* \* \*  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 261**

[SW-FRL-7557-5]

**Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA, also the Agency or we in this preamble) today is granting a petition submitted by the Southeastern Public Service Authority (SPSA) and Onyx Environmental Services (Onyx) to exclude (or delist), on a one-time basis, a combustion ash from the lists of hazardous wastes.

After careful analysis, we have concluded that the petitioned waste does not present an unacceptable risk when disposed of in a Subtitle D (nonhazardous waste) landfill. This exclusion applies to combustion ash previously generated at the SPSA Power Plant in Portsmouth, Virginia, which is currently located at the SPSA Regional Landfill in Suffolk, Virginia. Accordingly, this final rule conditionally excludes a specific volume of the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when the petitioned waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

**EFFECTIVE DATE:** September 11, 2003.

**ADDRESSES:** The official docket for this rule is located at the offices of U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029, and is available for you to view from 8:30 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. Please call David M. Friedman at (215) 814-3395 for appointments. The public may copy

material from the docket at \$0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this document, please contact David M. Friedman at the address above, at (215) 814-3395, or via e-mail at *friedman.davidm@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Docket**

EPA has established an official docket for this action. The official docket consists of the petition submitted by SPSA/Onyx, the results of a risk assessment which evaluates the potential impact of the petitioned waste on human health and the environment, any public comments received, and other information related to this action. The official docket for this action is kept in a paper format, and is maintained at the address in the **ADDRESSES** section at the beginning of this document.

**Outline**

- I. Overview Information
- II. Background
  - A. What is a delisting petition?
  - B. What regulations allow a hazardous waste generator to petition for a delisting of its waste?
  - C. What information must the generator supply?
- III. SPSA/Onyx's Delisting Petition
  - A. What waste is the subject of SPSA/Onyx's petition?
  - B. What information did SPSA/Onyx submit to support this petition?
- IV. EPA's Evaluation and Final Decision
  - A. Why is EPA approving this petition?
  - B. What limitations are associated with this exclusion?
  - C. When is the final rule effective?
  - D. How does this action affect States?
- V. Public Comments Received on the Proposed Exclusion
  - A. Who submitted comments on the proposed rule?
  - B. Comments and responses by EPA.
- VI. Administrative Assessments

**I. Overview Information**

On June 18, 2003, we proposed to grant a petition submitted by SPSA/Onyx to exclude (or delist) from the definition of hazardous waste on a one-time basis, a combustion ash previously generated at the SPSA Power Plant in Portsmouth, Virginia, which is currently located at the SPSA Regional Landfill in Suffolk, Virginia. Today we are finalizing the decision to grant a

conditional exclusion as described in the June 18, 2003, proposed rule.

**II. Background**

*A. What Is a Delisting Petition?*

A delisting petition is a formal request from a generator asking EPA to exclude a specific waste from the lists of hazardous waste contained in the RCRA regulations, because the generator believes that its waste should not be considered hazardous.

In order for a petition to succeed, a petitioner must first show that a waste generated at its facility does not meet any of the criteria for which the waste was listed. The criteria which we use to list wastes are found in 40 CFR 261.11. An explanation of how these criteria apply to a particular waste is contained in the background document for that listed waste.

In addition, the petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics defined in subpart C of 40 CFR part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for us to determine whether any other factors (including additional constituents) warrant retaining the waste as a hazardous waste.

A generator remains obligated under RCRA to confirm that its waste remains non-hazardous based on the hazardous waste characteristics defined in subpart C of 40 CFR part 261, even if EPA has delisted its waste.

*B. What Regulations Allow a Hazardous Waste Generator To Petition for a Delisting of Its Waste?*

Under 40 CFR 260.20 and 260.22, a generator may petition EPA to remove its waste from hazardous waste regulation by excluding it from the lists of hazardous wastes contained in 40 CFR part 261, subpart D. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273 of Title 40 of the Code of Federal Regulations. 40 CFR 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.