

areas submitted by the Secretary of Maryland Department of Environment on March 21, 1994. This submittal consists of the 1990 base year point, area, non-road mobile, biogenic and on-road mobile source emission inventories for the following pollutants: volatile organic compounds (VOC), carbon monoxide (CO), and oxides of nitrogen (NO_x).

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40 CFR Part 52

[KY81-1-9638; FRL-5607-3]

Approval and Promulgation of Air Quality Implementation Plans; The Commonwealth of Kentucky—Disapproval of the Request to Redesignate the Kentucky Portion of the Cincinnati-Northern Kentucky Moderate Ozone Nonattainment Area to Attainment and the Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is disapproving the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet's (Cabinet) request to redesignate the Kentucky portion of the Cincinnati-Northern Kentucky moderate ozone nonattainment area to attainment and the associated maintenance plan as a revision to the state implementation plan (SIP). The EPA determined that the area registered a violation of the ozone national ambient air quality standard (NAAQS). As a result, the Cincinnati-Northern Kentucky area no longer meets the statutory criteria for redesignation to attainment of the ozone NAAQS.

EFFECTIVE DATE: September 27, 1996.

ADDRESSES: Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303-3104.

Division of Air Quality, Department for Environmental Protection, Natural

Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/562-9035. Reference file KY-081-1-9638.

SUPPLEMENTARY INFORMATION: On November 11, 1994, the Cabinet submitted a request to EPA to redesignate the Kentucky portion of the Cincinnati-Northern Kentucky moderate interstate ozone nonattainment area from nonattainment to attainment. On that date, the Cabinet also submitted a maintenance plan for the area as a revision to the Kentucky SIP.

According to section 107(d)(3)(E) of the Clean Air Act (CAA), 42 U.S.C. 7407(d)(3)(E), redesignation requests must meet five specific criteria in order for EPA to redesignate an area from nonattainment to attainment:

1. The Administrator determines that the area has attained the ozone NAAQS;
2. The Administrator has fully approved the applicable implementation plan for the area under section 110(k);
3. The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollution control regulations and other permanent and enforceable reductions;
4. The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and
5. The State containing such area has met all requirements applicable to the area under section 110 and part D.

All five criteria must be satisfied in order for EPA to redesignate an area from nonattainment to attainment.

Under the first criteria, the Administrator of EPA is prohibited from redesignating an area to attainment when that area has not attained the NAAQS. The CAA requires the area to be in attainment at the time of the final action on the redesignation. If a violation occurs prior to EPA's final action, the area is no longer in attainment and EPA cannot redesignate the area to attainment status.

At the time of the Commonwealth's redesignation submittal in 1994, the Cincinnati-Northern Kentucky area

appeared to have attained the NAAQS, based on air quality data monitored from 1992 through 1994. However, during EPA's review of the redesignation request, ambient air quality data indicated that the area had registered a violation of the ozone NAAQS in 1995. This ambient data has been quality assured according to established procedures for validating such monitoring data. The Cabinet does not contest that the area violated the NAAQS for ozone during the 1995 ozone season. As a result, the Cincinnati-Northern Kentucky area does not meet the statutory criteria for redesignation to attainment of the ozone NAAQS found in section 107(d)(3)(E)(i) of the CAA.

The maintenance plan SIP revision is not approvable because its demonstration is based on a level of ozone precursor emissions in the ambient air thought to represent an inventory of emissions that would provide for attainment and maintenance. That underlying basis of the maintenance plan's demonstration is no longer valid due to the violation of the NAAQS that occurred during the 1995 ozone season.

Request for Comments

EPA published a document on April 17, 1996, (61 FR 16738) proposing disapproval of the maintenance plan and redesignation request and soliciting comment on the disapproval and relevant issues. EPA received a number of comments on the proposal. Those comments and the response thereto are summarized below.

Comment #1—The violation of the ozone standard which occurred subsequent to the submission of the request cannot be considered evidence that the area did not achieve the ozone standard, by the very definition of the standard as set forth in the Act and the regulations. The continued designation of the area as nonattainment not only fails to serve a useful purpose, but actually inhibits the broader view of urban ozone pollution that will be necessary to improve air quality. Public acceptance of control implementation may be enhanced under an attainment area contingency plan strategy. This is an additional factor which should not be overlooked as EPA and the states struggle to gain public acceptance of new air quality improvement plans.

Response—The CAA authorizes EPA up to 18 months from submittal to act on a state's request to redesignate. If a violation occurs during the pendency of EPA's review, EPA cannot approve the request since the area would not have remained in attainment. Since only a

final rulemaking can change an area's designation, the area must continue to meet attainment criteria until the final rulemaking is published. In addition, EPA is obligated to consider all relevant data available to it at the time of its decision-making. This means that if EPA has valid data indicating a violation of the ozone standard for the Cincinnati-Northern Kentucky area prior to final rulemaking, it must consider that data in determining whether the area is in attainment. The CAA prohibits a redesignation to attainment if the area is not, in fact, attaining the NAAQS at the time of final rulemaking.

The violation of the ozone standard which occurred after submittal of the Kentucky redesignation request for the Cincinnati-Northern Kentucky area is properly considered data on attainment status. Therefore, EPA is disapproving the redesignation request.

Comment #2—A redesignation to attainment should not be interpreted to mean more than the satisfaction of those provisions mandated in the CAA for the request to be granted.

Response—EPA is not requiring more for a redesignation to attainment than that required by the CAA. Section 107(d)(3)(E)(i) of the CAA states, "The Administrator may not promulgate a redesignation of a nonattainment area (or portion thereof) to attainment unless the Administrator determines that the area has attained the national ambient air quality standard." Once the violation occurred, the Cincinnati-Northern Kentucky area no longer met the statutory criteria for redesignation to attainment of the ozone NAAQS. Therefore, EPA is disapproving the redesignation request.

Comment #3—The approval of the requests will do nothing to inhibit the immediate implementation of emission control programs within the nonattainment area.

Response—Approving the request to redesignate the area to attainment would not guarantee that the area would achieve the NAAQS. Conversely, disapproving the redesignation request in no way prohibits the implementation of emission control programs within the nonattainment area. In fact, disapproval would require the area to meet all the CAA measures for moderate ozone nonattainment areas.

Comment #4—The violation was due to a single exceedance that occurred at a monitoring site in Ohio and should not affect the redesignation of the Kentucky portion of the nonattainment area.

Response—Ozone is a pollutant that is not directly emitted, but is formed

from a photochemical reaction between volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) in the presence of sunlight. Ozone may be formed as much as 20 miles from where the VOCs and NO_x are emitted and transported even farther. This makes ozone an area-wide problem. The ozone NAAQS is 0.12 parts per million as stated in 40 CFR 50.9. To be considered a violation, a single monitor must exceed this value four times in a three year period. The NAAQS was exceeded for the fourth time in two years at the Lebanon, Ohio site in Warren County Ohio. The fourth exceedance caused the violation, however, two sites in Northern Kentucky also exceeded the standard in this time period. In addition, as indicated above, the CAA states that EPA "may not promulgate a redesignation of a nonattainment area (or portion thereof) to attainment unless * * * the area has" attained the standard. Although a violation did not occur in the Kentucky portion of the nonattainment area, a request to redesignate a portion of an area to attainment may not be approved if the entire area does not meet the redesignation requirements.

Comment #5—Before the CAA Amendments of 1990, the U.S. EPA could redesignate an area only after a request by the governor of the state in which it was located. The 1990 amendments provided EPA with the authority to act unilaterally to propose redesignation. This authority will allow the federal agency to respond much more quickly if a state is recalcitrant in implementing or enforcing contingency measures.

Response—The revised CAA does allow EPA to act more quickly to redesignate to nonattainment, however, the Cincinnati-Northern Kentucky area no longer meets the statutory criteria for redesignation to attainment of the ozone NAAQS. The Agency cannot redesignate an area that violates the standard prior to final action on a redesignation request. Therefore, EPA is disapproving the redesignation request.

Final Action

EPA disapproves the Commonwealth's November 11, 1994 redesignation request and maintenance plan SIP revision. The agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the CAA. The Agency has determined that this action does not conform with the statute as amended and should be disapproved.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the

procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

EPA's denial of the State's redesignation request under section 107(d)(3)(E) does not affect any existing requirements applicable to small entities nor does it impose new requirements. The area retains its current designation status and will continue to be subject to the same statutory requirements. To the extent that the area must adopt regulations, based on its nonattainment status, EPA will review the effect of those actions on small entities at the time the state submits those regulations. Therefore, I certify that denial of the redesignation request will not affect a substantial number of small entities.

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the

program provided for under Section 110 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being disapproved by this action would impose any new requirements. Since such sources are already subject to these regulations under State law, no new requirements are imposed by this disapproval. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

Under 5 U.S.C. 801(a)(1)(A) of the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule 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 September 27, 1996. 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

Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 15, 1996.

R. F. McGhee,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart S—Kentucky

2. Section 52.930 is amended by adding paragraph (c) to read as follows:

§ 52.930 Control strategy: Ozone.

* * * * *

(c) The redesignation request submitted by the Commonwealth of Kentucky, on November 11, 1994, for the Kentucky portion of the Cincinnati-Northern Kentucky moderate interstate ozone nonattainment area from nonattainment to attainment was disapproved on September 27, 1996.

[FR Doc. 96-24858 Filed 9-26-96; 8:45 am]

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40 CFR Part 281

[FRL-5614-6]

Delaware; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Delaware's application for program approval.

SUMMARY: The State of Delaware has applied for approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the State of Delaware's application and has made a final determination that the State of Delaware's underground storage tank program satisfies all of the requirements necessary to qualify for approval. Thus, EPA is granting final approval to the State of Delaware to operate its program.

EFFECTIVE DATE: Program approval for Delaware shall be effective on October 28, 1996.

FOR FURTHER INFORMATION CONTACT:

Joanne T. Cassidy, State Programs Branch (3HW60), U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 566-3381.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. To qualify for approval, a State's program must be "no less stringent" than the Federal program in all seven elements set forth at section 9004(a) (1) through (7) of RCRA, 42 U.S.C. 6991c(a) (1) through (7), as well as the notification requirements of section 9004(a)(8) of RCRA, 42 U.S.C. 6991c(a)(8) and must provide for adequate enforcement of compliance

with UST standards (section 9004(a) of RCRA, 42 U.S.C. 6991c(a)).

On November 20, 1995, the State of Delaware submitted an official application for approval to administer its underground storage tank program. On August 5, 1996, EPA published a tentative decision announcing its intent to approve Delaware's program. Further background on the tentative decision to grant approval appears at 61 FR 40592, (August 5, 1996).

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public hearing on the application. EPA requested advance notice for testimony and reserved the right to cancel the public hearing in the event of insufficient public interest. Since there was no request, the public hearing was cancelled.

B. Final Decision

I conclude that the State of Delaware's application for program approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA and 40 CFR Part 281. Accordingly, Delaware is granted approval to operate its underground storage tank program in lieu of the Federal program.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this action from the requirements of Section 6 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a "Federal mandate" and because it does not impose annual costs of \$100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional