

frequent breakdowns resulting in emergency bridge closures.

This deviation allows the draw of the CSX Transportation railroad swing span drawbridge to remain closed to navigation from 10 a.m. until 3 p.m. on March 18 and 19, 2002.

Dated: February 25, 2002.

**Roy J. Casto,**

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

[FR Doc. 02-5805 Filed 3-11-02; 8:45 am]

BILLING CODE 4910-15-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR PART 81

[OH132-4; FRL-7155-2]

#### Designation of Areas for Air Quality Planning Purposes; Ohio; Technical Amendment

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Cincinnati-Hamilton moderate ozone nonattainment area (Cincinnati-Hamilton area) was redesignated to attainment on June 19, 2000. The Cincinnati-Hamilton area includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. On September 11, 2001, the United States Court of Appeals for the 6th Circuit (Court) vacated EPA's redesignation of the Cincinnati-Hamilton area, after concluding that EPA erred in one respect that pertained solely to the Ohio portion of the area. Therefore, pursuant to the Court's decision, EPA is making a technical amendment to the listing of the Ohio portion of the Cincinnati-Hamilton area to reflect the designation of Hamilton, Butler, Clermont, and Warren Counties, Ohio as nonattainment for ozone, with a classification of moderate nonattainment, effective as of July 5, 2000, the effective date of EPA's June 19, 2000 rulemaking. The status of the Kentucky portion of the Cincinnati-Hamilton area has been addressed in a separate rulemaking action.

**DATES:** This technical amendment is effective on April 11, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Mary Portanova, Environmental Engineer, EPA Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604; (312) 353-5954, (portanova.mary@epa.gov).

## SUPPLEMENTARY INFORMATION:

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#### I. What Action Are We Taking?

In this technical amendment, EPA is amending 40 CFR 81.336 to designate the Ohio portion of the Cincinnati-Hamilton area as nonattainment for ozone, with a classification of moderate nonattainment. EPA is making this amendment in response to the September 11, 2001 Court decision in *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) which vacated EPA's June 19, 2000 (65 FR 37879) redesignation of the Cincinnati-Hamilton area to attainment and remanded to EPA for further proceedings consistent with the Court's opinion.

#### II. What Is the Background for This Action?

Under section 107(d) of the Clean Air Act (CAA) as amended in 1977, the Cincinnati metropolitan area was designated as an ozone nonattainment area in March 1978 (43 FR 8962). On November 6, 1991 (56 FR 56694), pursuant to section 107(d)(4)(A) of the CAA as amended in 1990, the Cincinnati-Hamilton area was reaffirmed as nonattainment and classified as moderate, due to monitored violations of the National Ambient Air Quality Standard (NAAQS) for ozone that occurred during the 1987-1989 time frame.

For the 1996-1998 ozone seasons, Kentucky and Ohio recorded three years of complete, quality-assured, ambient air monitoring data for the Cincinnati-Hamilton area that demonstrated attainment with the 1-hour ozone NAAQS, making the area eligible for redesignation. Quality-assured ozone monitoring data for the 1999 and 2000 ozone seasons, and preliminary ozone monitoring data for the 2001 ozone season, show that the area continues to attain the 1-hour ozone NAAQS.

Kentucky and Ohio submitted separate requests to redesignate the Cincinnati-Hamilton area from nonattainment to attainment for the 1-hour ozone NAAQS in 1999. On January 24, 2000 (65 FR 3630) EPA proposed to approve the redesignation requests. This rulemaking also proposed to determine that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS by its extended attainment date, and proposed to approve an exemption for the area from nitrogen oxides (NO<sub>x</sub>) requirements as provided for in section 182(f) of the CAA. After taking and

considering public comments, EPA issued a final rulemaking (65 FR 37879, June 19, 2000), effective July 5, 2000, which determined that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS, and approved Kentucky's and Ohio's requests for the area's redesignation to attainment and their plans for maintaining the 1-hour ozone NAAQS. This final rulemaking action revised 40 CFR 81.336 to list the Cincinnati-Hamilton area as attainment for ozone.

On August 17, 2000, two Ohio residents and the Ohio chapter of the Sierra Club petitioned the United States Court of Appeals for the Sixth Circuit (Court) for review of EPA's redesignation of the Cincinnati-Hamilton area. On September 11, 2001, the Court concluded that EPA erred only on one element that pertained solely to the Ohio portion of the Cincinnati-Hamilton area. The Court thus upheld EPA's actions, with the sole exception of EPA's finding that it could approve Ohio's redesignation request before Ohio had fully adopted all of the Reasonably Available Control Technology (RACT) rules of Part D, Subpart 2 of the Clean Air Act. The Court vacated EPA's action in redesignating the Cincinnati-Hamilton area and remanded to EPA for further proceedings. See *Wall v. EPA*, (265 F.3d 426, 6th Circuit 2001). EPA is therefore amending 40 CFR 81.336 to reflect the Court's decision.

#### III. What Is the Effect of This Action?

This technical amendment amends the listing in 40 CFR 81.336 to indicate that Hamilton, Butler, Clermont, and Warren Counties, Ohio are designated as nonattainment for ozone, with a classification of moderate nonattainment. This technical amendment has no impact on the official designation of the Kentucky Counties of Boone, Campbell, and Kenton, as identified in 40 CFR 81.318. The attainment status of the Kentucky portion of the Cincinnati-Hamilton area has been addressed in a separate rulemaking action.

The other EPA actions taken in the June 19, 2000, redesignation rulemaking for the Cincinnati-Hamilton area which were upheld by the Court are unaffected by this amendment. EPA's approvals of Kentucky's and Ohio's maintenance plans have remained in place, since the Court upheld our approval of these plans. Similarly, EPA's determination of attainment for the area has remained in place. Thus the requirements of section 172(c)(1), 182(b)(1) and 182(j) concerning the submission of the ozone attainment demonstration and the

requirements of section 172(c)(9) concerning contingency measures for reasonable further progress (RFP) or attainment continue to remain inapplicable to the area. Since the NO<sub>x</sub> exemption was not affected by the Court's ruling, the area also remains exempt from section 182(f) NO<sub>x</sub> requirements for moderate ozone nonattainment areas.

**IV. Administrative 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 is taken pursuant to a decision of the United States Court of Appeals for the Sixth Circuit and merely reflects the Court's action in reinstating the area's previous designation, an action that affects the attainment status of a geographical area. Under these circumstances, correcting the listing for the designation of the area as nonattainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on sources, including small entities. 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 merely reflects the Court's decision, reinstating a prior existing designation, it does not impose any additional enforceable duty beyond that previously

required and 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 corrects the listing of the area's nonattainment designation, pursuant to court decision. It does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements. Nor does it alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this action. This action 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.

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

**List of Subjects In 40 CFR Part 81**

Air pollution control, National parks, Wilderness areas.

Dated: February 28, 2002.

**Norman Niedergang,**  
*Acting Regional Administrator, Region 5.*

Chapter I, title 40 of the Code of Federal Regulations are amended as follows:

**PART 81—[AMENDED]**

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

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

2. In § 81.336, the "Ohio-Ozone (1-Hour Standard)" table is amended by revising the entry for the "Cincinnati-Hamilton Area" to read as follows:

**§ 81.336 Ohio.**

\* \* \* \* \*

**OHIO—OZONE (1-HOUR STANDARD)**

Designated Area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *				
Cincinnati-Hamilton Area:				
Butler County .....		Nonattainment .....		Moderate. <sup>2</sup>
Clermont County .....		Nonattainment .....		Moderate. <sup>2</sup>
Hamilton County .....		Nonattainment .....		Moderate. <sup>2</sup>
Warren County .....		Nonattainment .....		Moderate. <sup>2</sup>
* * * * *				

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.  
<sup>2</sup> Attainment date extended to November 15, 1997.

\* \* \* \* \*

[FR Doc. 02-5865 Filed 3-12-02; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 141**

[FRL-7157-3]

**Unregulated Contaminant Monitoring Regulation for Public Water Systems; Establishment of Reporting Date**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** Today's direct final rule establishes August 9, 2002, as a new, later date by which large water systems serving more than 10,000 persons must report all contaminant monitoring results they receive before May 13, 2002, for the Unregulated Contaminant Monitoring Regulation (UCMR) monitoring program. Monitoring results received on or after May 13, 2002, must be reported within thirty days following the month in which laboratory results are received, as specified in the current regulation for this program.

**DATES:** This rule is effective May 13, 2002, without further notice, unless EPA receives adverse comment by April 11, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. EST on May 13, 2002, as provided in 40 CFR 23.7.

**ADDRESSES:** Please send an original and three copies of your comments and enclosures (including references) to docket number W-00-01-IV, Comment

Clerk, Water Docket (MC4101), USEPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Due to uncertainty of mail delivery in the Washington, DC area, in order to ensure that your comments are received, please also send a separate copy of your comments to Greg Carroll, USEPA, 26 West Martin Luther King Drive, MC-140, Cincinnati, Ohio 45268. Hand deliveries should be delivered to EPA's Water Docket at 401 M. St., SW., Room EB57, Washington, DC. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to *ow-docket@epamail.epa.gov*. Electronic comments must be submitted as a Word Perfect (WP) WP5.1, WP6.1 or WP8 file or as an ASCII file, avoiding the use of special characters and forms of encryption. Electronic comments must be identified by the docket number W-00-01-IV. Comments and data will also be accepted on disks in WP 5.1, 6.1, 8 or ASCII file format. Electronic comments on this rule may be filed online at many Federal Depository Libraries.

The record for this rulemaking has been established under docket number W-00-01-IV and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, EB 57, USEPA Headquarters, 401 M St., SW., Washington, DC. For access to docket materials, please call 202/260-3027 to schedule an appointment.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Bryan (202) 564-3942, Drinking

Water Protection Division, Office of Ground Water and Drinking Water (MC-4606-M), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460. General information about UCMR may be obtained from the EPA Safe Drinking Water Hotline at (800) 426-4791. The Hotline operates Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. ET.

**SUPPLEMENTARY INFORMATION:**

**Potentially Regulated Entities**

The regulated entities are public water systems. All large community and non-transient non-community water systems serving more than 10,000 persons are required to monitor and report under the UCMR. A community water system (CWS) means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Non-transient non-community water system (NTNCWS) means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year. This rule does not apply to systems serving 10,000 or fewer persons that were randomly selected to participate in the unregulated contaminant monitoring program, since EPA arranges for testing and reporting for those systems. States, Territories, and Tribes, with primacy to administer the regulatory program for public water systems under the Safe Drinking Water Act, sometimes conduct analyses to measure for contaminants in water samples and are regulated by this action. Categories and entities potentially regulated by this action include the following:

Category	Examples of potentially regulated entities	NAICS
State, Territorial and Tribal Governments.	States, Territories, and Tribes that analyze water samples on behalf of public water systems required to conduct such analysis; States, Territories, and Tribes that themselves operate community and non-transient non-community water systems required to monitor.	924110
Industry .....	Private operators of community and non-transient non-community water systems required to monitor	221310
Municipalities .....	Municipal operators of community and non-transient non-community water systems required to monitor.	924110

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware of that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action

to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**I. Statutory Authority**

SDWA section 1445 (a)(2), as amended in 1996, requires EPA to establish criteria for a program to monitor unregulated contaminants and to issue, by August 6, 1999, a list of

contaminants to be monitored. In fulfillment of this requirement, EPA published Revisions to the UCMR for public water systems on September 17, 1999 (66 FR 46221), March 2, 2000 (65 FR 11372), and January 11, 2001 (66 FR 2273), which included lists of contaminants for which monitoring was required or would be required in the future. On September 4, 2001 (56 FR