

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52 and 81**

[WI96-01-7327a; FRL-6901-3]

Approval and Promulgation of Implementation Plans; Wisconsin Designation of Areas for Air Quality Planning Purposes; Wisconsin**AGENCY:** Environmental Protection Agency.**ACTION:** Direct final rule.

SUMMARY: On November 5, 1999, the Wisconsin Department of Natural Resources (WDNR) submitted a request to the Environmental Protection Agency (EPA) to redesignate a portion of the City of Rhinelander (Oneida County) Wisconsin from a primary sulfur dioxide (SO₂) nonattainment area to attainment. In this action EPA is approving the State's request, because it meets all of the Clean Air Act (Act) requirements for redesignation.

If EPA receives adverse comments on this action, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

DATES: This "direct final" rule is effective January 16, 2001, unless EPA receives adverse or critical comments by December 15, 2000. If the rule is withdrawn, EPA will publish timely notice in the **Federal Register**.

ADDRESSES: Send written comments to Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), United Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Madeline Rucker at (312) 886-0661, before visiting the Region 5 Office.)

A copy of this redesignation is available for inspection at this Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 260-7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section (AR-18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328.

SUPPLEMENTARY INFORMATION:**I. Background**

This Supplementary Information section is organized as follows:

- A. What action is EPA taking?
- B. Why was this SIP revision submitted?
- C. Why can we approve this request?
- D. What requirements must be met for approval of a redesignation, and how did the state meet them?

A. What Action Is EPA Taking?

We are approving the State of Wisconsin's request to redesignate a portion of the City of Rhinelander (Oneida County) from a primary SO₂ nonattainment area to attainment of the SO₂ NAAQS. We are also approving the maintenance plan for this area into the Wisconsin SO₂ SIP.

B. Why Was This SIP Revision Submitted?

WDNR believes that the City of Rhinelander is now eligible for redesignation because EPA approved Wisconsin's SO₂ SIP in 1995 and SO₂ monitors in Rhinelander have not recorded exceedances of either the primary or secondary SO₂ air quality standards since 1986.

C. Why Can We Approve This Request?

Consistent with the Act's requirements, EPA developed procedures for redesignation of nonattainment areas that are in a September 4, 1992, memorandum from John Calcagni, EPA, titled, *Procedures for Processing Requests to Redesignate Areas to Attainment*. This EPA guidance document contains a number of conditions that a State must meet before it can request a change in designation for a federally designated nonattainment area. That memorandum and EPA's Technical Support Document set forth the rationale in support of the redesignation of Rhinelander's SO₂ nonattainment area to an attainment status.

D. What Requirements Must the State Meet for Approval of a Redesignation and How Did the State Meet Them?**1. The State Must Show That the Area Is Attaining the Applicable NAAQS**

There are two components involved in making this demonstration:

- a. Ambient air quality monitoring representative of the area of highest concentration must show no more than one exceedance annually; and
- b. EPA approved air quality modeling must show that the area in question meets the applicable standard.

The first component relies on ambient air quality data representative of the

area of highest concentration. The primary 24-hour concentration limit of the SO₂ NAAQS is 365 micrograms per cubic meter (µg/m³). The primary annual concentration limit is 80 µg/m³. According to 40 CFR 50.4, an area must show no more than one exceedance annually. WDNR's monitoring data satisfies the first component, indicating that there has been no exceedance of the 24-hour concentration limit since 1986. Monitoring data for the annual concentration limit goes back to 1994 and indicates no exceedance of the annual limit since that time.

The second component relies on supplemental EPA approved air quality modeling. Air quality modeling, however, could not be used in this case because the modeling under-predicted actual ambient air concentrations due to the unique topography of the area. Under EPA modeling guidelines, ambient data (*i.e.*, a rollback analysis) may be used to determine appropriate emission limits. A rollback analysis takes a monitored ambient exceedance recorded during a specific set of facility operating conditions and determines the amount of the exceedance due to each of the source's SO₂-emitting operations in use at that time. These estimates are then linearly "rolled back" to acceptable SO₂ emission limits that provide for attainment of the NAAQS under that set of operating conditions. The State submitted emission limits determined by using the rollback analysis in an October 21, 1994 SIP revision. EPA approved these limits into the Wisconsin SO₂ SIP by EPA on December 7, 1994 at 59 FR 63046.

Therefore, WDNR satisfied the second component by supplying monitoring information as a substitute for the modeling demonstration requirement, showing that the area has been in attainment of the SO₂ NAAQS since 1987.

2. The SIP for the Area Must Be Fully Approved Under Section 110(k) of the Act and Must Satisfy all Requirements That Apply to the Area

WDNR submitted the Rhinelander SO₂ SIP revision to EPA on October 21, 1994 to fulfill the requirements of section 110 and part D of the Act. The state's submittal consisted primarily of an August 22, 1994 Consent Order (AM-94-38) between the state and the Rhinelander Paper Company (RPC). EPA approved the permanent requirements of the consent order for RPC into the federally enforceable SO₂ SIP on December 7, 1994 at 59 FR 63046.

3. EPA Has Determined That the Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions

Pursuant to the August 22, 1994 Consent Order, RPC must meet certain emissions limits. EPA approved these permanent requirements into the federally enforceable SIP on December 7, 1994. In addition, if RPC exceeds the emission limits contained in the order, WDNR can enforce those conditions under Chapter NR 494, Wisconsin Administrative Code, and section 144.423 (now 285.83) and 144.426 (now 285.87), Wis. Stats.

4. The State Has Met All Applicable Requirements Under Section 110 and Part D of the Act That Were Applicable Prior to Submittal of the Complete Redesignation Request

Section 110(a)(2) of the Act contains the general requirements for nonattainment plans. Part D contains the general requirements applicable to all areas that are designated nonattainment based on a violation of the NAAQS. These requirements are satisfied by EPA's December 7, 1994 approval of the nonattainment plan that Wisconsin submitted on October 21, 1994 for the control of SO₂ emissions in the Rhinelander area.

A PSD program will replace the requirements of the part D new source review program after redesignation of the area. To ensure that the PSD program will become fully effective immediately upon redesignation, either EPA must delegate the Federal PSD program to the State or the State must make any needed modifications to its rules to have the approved PSD program apply to the affected area upon redesignation. EPA fully approved Wisconsin's PSD program, effective June 28, 1999.

5. EPA Has Fully Approved a Maintenance Plan, Including a Contingency Plan, for the Area Under Section 175A of the Act

Section 107(d)(3)(E) of the Act states that, for an area to be redesignated, EPA must fully approve a maintenance plan that meets the requirements of section 175A. Section 175A of the Act requires states to submit a SIP revision that provides for the maintenance of the NAAQS in the area for at least 10 years after approval of the redesignation. The basic components needed to ensure proper maintenance of the NAAQS are: attainment inventory, maintenance demonstration, verification of continued attainment, ambient air monitoring network, and a contingency plan. EPA

is approving the maintenance plan in today's action as discussed below.

a. *Attainment Inventory.* RPC is the only significant source of SO₂ emissions in the area.

b. *Maintenance Demonstration and Verification of Continued Attainment.* As discussed earlier, air quality modeling is not applicable in this case because the model under-predicted the SO₂ impacts for Rhinelander. The SIP approved by EPA on December 7, 1994 contained Consent Order AM-94-38. Conditions cited in this consent order do not expire and therefore provide for maintenance of the SO₂ NAAQS for at least 10 years.

WDNR will monitor growth in the area through the annual submittal of RPC's air emission inventory. The plant wide emissions cap established in the consent order limits future SO₂ emissions at RPC. Further, WDNR staff believe the area will remain in attainment of the SO₂ NAAQS as long as the company does not expand and emit SO₂ above the consent order limits.

c. *Monitoring Network.* The WDNR has committed to operating an SO₂ monitor in the Rhinelander area until EPA and the WDNR both agree that the monitor is no longer necessary.

d. *Contingency Plan.* Section 175A of the Act requires that the maintenance plan include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area. Upon verification of two exceedances (a violation) of either the 24-hour or 3-hour SO₂ NAAQS, WDNR will investigate the causes of the violation. If the analysis of the violation identifies RPC as responsible for the violation, WDNR will work with the company to ensure that the violation will not occur again. WDNR will involve EPA, Region 5, in the discussions with the company. Once WDNR identifies the problem and sets a strategy to fix the problem, it will either (1) take an enforcement action against the company, (2) revise Consent Order AM-94-38 for greater stringency, or (3) write rules to control the emissions of SO₂ at the company. WDNR has committed to the following schedule: (1) To identify the responsible source within 30 days after a monitored violation; (2) to take action against the responsible source within 90 days of the violation; and, if EPA determines it necessary, (3) to submit a SIP revision to EPA with 360 days after the violation.

II. Final Action

We have evaluated the state's submittal and have determined that it meets the applicable requirements of the Act, EPA regulations, and EPA policy.

Therefore, we are approving the State of Wisconsin's request to redesignate a portion of the City of Rhinelander (Oneida County) from a primary SO₂ nonattainment area to attainment of the SO₂ NAAQS. We are also approving the maintenance plan for this area into the Wisconsin SO₂ SIP.

EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan should relevant adverse comments be filed.

This action will be effective January 16, 2001 without further notice unless relevant adverse comments are received by December 15, 2000. If EPA receives such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. We will then address all public comments received in a subsequent final rule based on the proposed action. We will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive such comments, this action will be effective January 16, 2001.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. We will consider each request for revision to the SIP separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have 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 rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 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, Executive Order 13084 requires EPA to develop an effective process permitting elected officials 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 Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will 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, because it 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

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.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such

grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976).

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 costs to State, local, or tribal governments in the aggregate; or to the 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 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**. 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). This rule will be effective January 16, 2001 unless EPA receives adverse written comments by December 15, 2000.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal

agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. 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 January 16, 2001. 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 § 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 27, 2000.

Gary Guleziah,

Acting Regional Administrator, Region 5.

Title 40, Chapter I of the Code of Federal Regulations, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

WISCONSIN—SO₂

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * *	*	*	*	*
Oneida County	X
* * * * *	*	*	*	*

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[FR Doc. 00-29221 Filed 11-14-00; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MO 117-1117a; FRL-6900-8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Landfill Emissions From Municipal Solid Waste Landfills; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the state of Missouri's section 111(d) plan for controlling emissions from existing municipal solid waste (MSW) landfills. The plan adopts the revisions to the Federal Emission Guidelines published June 16, 1998, and February 24, 1999. Approval of the revised plan

will ensure that the state plan contains the most current Federal requirements.

DATES: This rule is effective on January 16, 2001 without further notice, unless EPA receives adverse comment by December 15, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments must be submitted to Wayne Kaiser, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551-7603.

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

2. Section 52.2575 is amended by adding paragraph (b)(3) to read as follows:

§ 52.2575 Control strategy: Sulfur dioxide.
* * * * *

(b) * * *

(3) An SO₂ maintenance plan was submitted by the State of Wisconsin on November 5, 1999, for the City of Rhinelander, Oneida County.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

Authority: 42 U.S.C. 7401-7671q.

2. Section 81.350 is amended by revising the entry for Oneida County in the table entitled "Wisconsin-SO₂" to read as follows:

§ 81.350 Wisconsin.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we, us, or our" is used, we mean EPA.

Background

Standards and guidelines for new and existing MSW landfills were promulgated under the authority of sections 111 and 129 of the CAA. These standards are 40 CFR part 60, subpart WWW, new source performance standards (NSPS) for new MSW landfills, and subpart Cc, emission guidelines (EG) for existing MSW landfills. The final NSPS and EG were published in the **Federal Register** on March 12, 1996.

EPA subsequently revised these landfill rules twice, on June 16, 1998, and February 24, 1999. These actions amend, correct errors, and clarify regulatory text of the March 12, 1996 rule.

We first approved Missouri's 111(d) plan for MSW landfills on April 24 1998 (63 FR 20320.) The state's plan consists primarily of two state rules which adopt the Federal landfill requirements