

notification may be made by posting on our Web site or publishing the notice in a place reasonably likely to inform the submitters of the proposed disclosure.

(d) Submitters have 10 working days from the receipt of our notice or the date of posting or publishing the notice to object to the release and to explain the basis for the objection. The NARA FOIA Officer may extend this period as appropriate.

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22. Amend § 1250.84 by revising the section heading and revising paragraph (c) to read as follows:

**§ 1250.84 How do you serve a subpoena or other legal demand for NARA operational records?**

\* \* \* \* \*

(c) Regulations concerning service of a subpoena duces tecum or other legal demand for archival records accessioned into the National Archives of the United States, records of other agencies in the custody of the Federal records centers, and donated historical materials are located at 36 CFR 1256.4.

Dated: September 4, 2007.

**Allen Weinstein,**

*Archivist of the United States.*

[FR Doc. E7-17913 Filed 9-10-07; 8:45 am]

BILLING CODE 7515-01-P

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R05-OAR-2006-1023; FRL-8464-9]

**Approval and Promulgation of Air Quality Implementation Plans; Minnesota**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a site specific revision to the Minnesota State Implementation Plan (SIP) for particulate matter less than 10 microns (PM-10) for Lafarge North America Corporation (Lafarge), Childs Road Terminal located in Saint Paul, Ramsey County, Minnesota. In its December 18, 2006, submittal, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve Lafarge's federally enforceable state operating permit into the Minnesota PM SIP, and to revoke the previously approved Administrative Order for Lafarge from the PM-10 SIP.

**DATES:** Comments must be received on or before October 11, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2006-1023, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

- *E-mail:* [mooney.john@epa.gov](mailto:mooney.john@epa.gov).
- *Fax:* (312) 886-5824.
- *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, (AR-18J), Air Programs Branch, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, (AR-18J), Air Programs Branch, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:**

Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328, [panos.christos@epa.gov](mailto:panos.christos@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that

are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 29, 2007.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E7-17715 Filed 9-10-07; 8:45 am]

BILLING CODE 6560-50-P

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[EPA-R03-OAR-2007-0533; FRL-8465-8]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Centre County 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and 2002 Base Year Inventory**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Centre County ozone nonattainment area (State College Area) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). EPA is proposing to approve the ozone redesignation request for State College Area. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for State College Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is proposing to make a determination that the State College Area has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality ozone monitoring data for 2004-2006. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the State College Area has met the criteria for redesignation to attainment specified in the Clean Air Act. In addition, PADEP submitted a 2002 base year inventory for the State College Area which EPA is proposing to approve as a SIP revision. EPA is also providing information on the status of its adequacy determination for the motor vehicle emission budgets

(MVEBs) that are identified in the State College Area maintenance plan for purposes of transportation conformity, which EPA is also proposing to approve. EPA is proposing approval of the redesignation request, and the maintenance plan and the 2002 base year inventory SIP revisions in accordance with the requirements of the Clean Air Act.

**DATES:** Written comments must be received on or before October 11, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2007-0533 by one of the following methods:

A. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail:* [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov)

C. *Mail:* EPA-R03-OAR-2007-0533, Marilyn Powers, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2007-0533. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be

able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by e-mail at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

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

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#### I. What Are the Actions EPA Is Proposing To Take?

On June 12, 2007, PADEP formally submitted a request to redesignate the State College Area from nonattainment to attainment of the 8-hour NAAQS for ozone. Concurrently, on June 12, 2007, PADEP submitted a maintenance plan for the State College Area as a SIP revision to ensure continued attainment for at least 10 years after redesignation. PADEP also submitted a 2002 base year inventory as a SIP revision on June 12, 2007. The State College Area is

currently designated as a basic 8-hour ozone nonattainment area. EPA is proposing to determine that the State College Area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the Clean Air Act. EPA is, therefore, proposing to approve the redesignation request to change the designation of the State College Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the State College Area maintenance plan as a SIP revision, such approval being one of the Clean Air Act criteria for redesignation to attainment status. The maintenance plan is designed to ensure continued attainment in the State College Area for the next ten years. EPA is also proposing to approve the 2002 base year inventory for the State College Area as a SIP revision. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the State College Area maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) for transportation conformity purposes.

#### II. What Is the Background for These Proposed Actions?

##### A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO<sub>x</sub> and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO<sub>x</sub> and VOC are referred to as precursors of ozone. The Clean Air Act establishes a process for air quality management through the attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001-2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The State College Area was designated as basic 8-hour ozone nonattainment status in a **Federal Register** notice signed on April 15, 2004 and published on April 30, 2004 (69 FR 23857), based on its exceedance of the 8-hour health-based standard for ozone during the years 2001-2003.

On April 30, 2004, EPA issued a final rule (69 FR 23951, 23996) to revoke the 1-hour ozone NAAQS in the State

College Area (as well as most other areas of the country) effective June 15, 2005. See, 40 CFR 50.9(b); 69 FR at 23966 (April 30, 2004); 70 FR 44470 (August 3, 2005).

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist. v. EPA*, Docket No. 04-1201, in response to several petitions for rehearing, the DC Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, Part D of the Clean Air Act as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Clean Air Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS.

In addition, the June 8 decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

The Court upheld EPA's authority to revoke the 1-hour standard provided there were adequate anti-backsliding provisions. Elsewhere in this document, mainly in section VI.B. "The State College Area Has Met All Applicable Requirements Under Section 110 and Part D of the Clean Air Act and Has Fully Approved SIP under Section 110(k) of the Clean Air Act," EPA discusses its rationale why the decision in *South Coast* is not an impediment to redesignating the State College Area to attainment of the 8-hour ozone NAAQS.

The Clean Air Act, Title I, Part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as "basic" nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as "classified" nonattainment) provides more specific requirements for ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, an area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in the Clean Air Act for subpart 2 requirements). All other areas are covered under subpart 1, based upon their 8-hour design values. In 2004, State College Area was designated a basic 8-hour ozone nonattainment area based upon air quality monitoring data from 2001–2003, and therefore, is subject to the requirements of subpart 1 of Part D.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). See 69 FR 23857, (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. The ozone monitoring data from

the 3-year period of 2004–2006 indicates that the State College Area has a design value of 0.076 ppm. Therefore, the ambient ozone data for the State College Area indicates no violations of the 8-hour ozone standard.

#### B. The State College Area

The State College Area consists of Centre County, Pennsylvania. Prior to its designation as an 8-hour ozone nonattainment area, State College Area was an attainment/unclassifiable area for the 1-hour ozone nonattainment NAAQS. See 56 FR 56694 (November 6, 1991).

On June 12, 2007, PADEP requested that the State College Area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included 3 years of complete, quality-assured data for the period of 2004–2006, indicating that the 8-hour NAAQS for ozone had been achieved in the State College Area. The data satisfies the Clean Air Act requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value) is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). Under the Clean Air Act, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area has attained the standard and the area meets the other Clean Air Act redesignation requirements set forth in section 107(d)(3)(E).

#### III. What Are the Criteria for Redesignation to Attainment?

The Clean Air Act provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the Clean Air Act, allows for redesignation, providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA 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.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- “Ozone and Carbon Monoxide Design Value Calculations”, Memorandum from Bill Laxton, June 18, 1990;
- “Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,” Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- “Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,” Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act Deadlines,” Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
- “Technical Support Documents (TSD’s) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
- “State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,” Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
- Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, “Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,” dated November 30, 1993;
- “Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,” Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

- “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,” Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

**IV. Why Is EPA Taking These Actions?**

On June 12, 2007, PADEP requested redesignation of the State College Area to attainment for the 8-hour ozone standard. On June 12, 2007, PADEP submitted a maintenance plan for the State College Area as a SIP revision to assure continued attainment at least 10 years after redesignation. EPA has determined that the State College Area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E). PADEP also submitted a 2002 base year inventory concurrently with its maintenance plan as a SIP revision.

**V. What Would Be the Effect of These Actions?**

Approval of the redesignation request would change the designation of the State College Area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Pennsylvania SIP a 2002 base year inventory and a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the State College Area for the next 10 years. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the MVEBs for NO<sub>x</sub> and VOC for transportation conformity purposes for the years 2004, 2009 and 2018. These motor vehicle emissions (2004) and MVEBs (2009 and 2018) are displayed in the following table:

**TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY (TPD)**

Year	NO <sub>x</sub>	VOC
2009 .....	12.5	5.4
2018 .....	6.0	3.7

**VI. What Is EPA’s Analysis of the State’s Request?**

EPA is proposing to determine that State College Area has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The following is a description of how PADEP’s June 12, 2007 submittal satisfies the requirements of section 107(d)(3)(E) of the Clean Air Act.

*A. The State College Area Has Attained the 8-Hour Ozone NAAQS*

EPA is proposing to determine that the State College Area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete and consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the design value, which is the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations, measured at each monitor within the area over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In the State College Area, there is one monitor that measures air quality with respect to ozone. As part of its redesignation request, Pennsylvania submitted ozone monitoring data for the years 2004–2006 (the most recent three years of data available as of the time of the redesignation request) for the State College Area. This data has been quality assured and is recorded in AQS. The fourth-high 8-hour daily maximum concentrations, along with the three-year average, are summarized in Table 2.

**TABLE 2.—STATE COLLEGE COUNTY NONATTAINMENT AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES; STATE COLLEGE COUNTY MONITOR, AQS ID 42–027–0100**

Year	Annual 4th high reading (ppm)
2004 .....	0.069
2005 .....	0.083
2006 .....	0.078

The average for the 3-year period 2004 through 2006 is 0.076 ppm.

The air quality data for 2004–2006 show that the State College Area has attained the standard with a design value of 0.076 ppm. The data collected at the State College Area monitor satisfies the Clean Air Act requirement that the 3-year average of the annual

fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. PADEP's request for redesignation for the State College Area indicates that the data was quality assured in accordance with 40 CFR part 58. PADEP uses the AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. In addition, as discussed below with respect to the maintenance plan, PADEP has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by Pennsylvania and taken from AQS indicates that State College Area has attained the 8-hour ozone NAAQS.

*B. The State College Area Has Met All Applicable Requirements Under Section 110 and Part D of the Clean Air Act and Has a Fully Approved SIP Under Section 110(k) of the Clean Air Act*

EPA has determined that the State College Area has met all SIP requirements applicable for purposes of this redesignation under section 110 of the Clean Air Act (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title I of the Clean Air Act, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained what requirements are applicable to the area and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the Clean Air Act. We note that SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant Clean Air Act requirements that come due prior to the submittal of a complete redesignation request. *See also*, Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465-66, (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the Clean Air Act that

come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the Clean Air Act. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). *See also*, 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

This action also sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from proposing or ultimately finalizing this redesignation.

EPA believes that the Court's December 22, 2006 and June 8, 2007 decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the Clean Air Act and longstanding policies regarding redesignation requests.

**1. Section 110 General SIP Requirements**

Section 110(a)(2) of Title I of the Clean Air Act delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following:

- Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of Part C requirement (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a State from significantly

contributing to air quality problems in another State. To implement this provision, EPA has required certain States to establish programs to address transport of air pollutants in accordance with the NO<sub>x</sub> SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO<sub>x</sub> SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25162). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one particular area in the State.

Thus, we do not believe that these requirements are applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State College Area will still be subject to these requirements after it is redesignated. The section 110 and Part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (*i.e.*, for redesignations) and oxygenated fuels requirement. *See*, Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174-53176, October 10, 1996), (62 FR 24816, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See also*, the discussion on this issue in the Cincinnati redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR 50399, October 19, 2001). Similarly, with respect to the NO<sub>x</sub> SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO<sub>x</sub> SIP Call rules are not "an 'applicable requirement' for purposes of section 110(l) because the NO<sub>x</sub> rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS." 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the area's

nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, because, as we explain later in this notice, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation request.

Because the Pennsylvania SIP satisfies all of the applicable general SIP elements and requirements set forth in section 110(a)(2), EPA concludes that Pennsylvania has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Clean Air Act.

## 2. Part D Nonattainment Area Requirements Under the 1-Hour and 8-Hour Standards

The State College Area was designated a basic nonattainment area for the 8-hour ozone standard. Sections 172–176 of the Clean Air Act, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. As discussed previously, because the State College Area was designated unclassifiable/attainment under the 1-hour standard, and was never designated nonattainment for the 1-hour standard, there are no outstanding 1-hour nonattainment area requirements it would be required to meet. Thus, we find that the Court's ruling does not result in any additional 1-hour requirements for purposes of redesignation.

With respect to the 8-hour standard, EPA notes that the Court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this area could, during a remand to EPA, be reclassified under subpart 2. Although any future decision by EPA to classify this under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation of the area cannot now go forward. This belief is based upon (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time the request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

At the time the redesignation request was submitted, the State College Area was classified under subpart 1 and was obligated to meet subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the Clean Air Act, to

qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. *See* September 4, 1992 Calcagni memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division). *See also*, Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004) (which upheld this interpretation); 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The DC Circuit recognized the inequity in such retroactive rulemaking. *See, Sierra Club v. Whitman*, 285 F.3d 63 (DC Cir. 2002), in which the DC Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: "Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plan in 1997, even though they were not on notice at the time." *Id.* at 68. Similarly, here it would be unfair to penalize the area by applying to it for purposes of redesignation additional SIP requirements under subpart 2 that were not in effect at the time it submitted its redesignation request.

With respect to the 8-hour standard, EPA proposes to determine that Pennsylvania's SIP meets all applicable SIP requirements under Part D of the Clean Air Act, because no 8-hour ozone standard Part D requirements applicable for purposes of redesignation became due prior to submission of the redesignation request for the State College Area. Because the Commonwealth submitted a complete redesignation request for the State College Area prior to the deadline for any submissions required under the 8-hour standard, we have determined that the Part D requirements do not apply to the State College Area for the purposes of redesignation.

In addition to the fact that no Part D requirements applicable under the 8-hour standard became due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the general conformity and NSR requirements of Part D as not requiring approval prior to redesignation.

With respect to section 176, Conformity Requirements, section 176(c) of the Clean Air Act requires States to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act ("transportation conformity") as well as to all other Federally supported or funded projects ("general conformity"). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the Clean Air Act required EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. *See, Wall v. EPA*, 265 F.3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. *See also*, 60 FR 62748 (December 7, 1995).

In the case of the State College Area, EPA has also determined that before being redesignated, the State College Area need not comply with the requirement that a NSR program be approved prior to redesignation. EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect. The rationale for this position is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D NSR Requirements of Areas Requesting Redesignation to Attainment." Normally, State's Prevention of Significant Deterioration (PSD) program will become effective in the area immediately upon redesignation to attainment. *See* the more detailed explanations in the following redesignation rulemakings: Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, OH

(61 FR 20458, 20469–20470, May 7, 1996); Louisville, KY (66 FR 53665, 53669, October 23, 2001); Grand Rapids, MI (61 FR 31831, 31836–31837, June 21, 1996). In the case of the State College Area, the Chapter 127 Part D NSR regulations in the Pennsylvania SIP (codified at 40 CFR 52.2020(c)(1)) explicitly apply the requirements for NSR in section 184 of the Clean Air Act to ozone attainment areas within the ozone transport region (OTR). The OTR NSR requirements are more stringent than that required for a marginal or basic ozone nonattainment area. On October 19, 2001 (66 FR 53094), EPA fully approved Pennsylvania's NSR SIP revision consisting of Pennsylvania's Chapter 127 Part D NSR regulations that cover the State College Area.

All areas in the OTR, both attainment and nonattainment, are subject to additional control requirements under section 184 for the purpose of reducing interstate transport of emissions that may contribute to downwind ozone nonattainment. The section 184 requirements include reasonably Available control technology (RACT), NSR, enhanced vehicle inspection and maintenance (I/M), and Stage II vapor recovery or a comparable measure.

EPA has also interpreted the section 184 OTR requirements, including the NSR program, as not being applicable for purposes of redesignation. The rationale for this is based on two considerations. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have NSR, as well as RACT,

and I/M programs even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the State College Area by virtue of the area's designation and classification. See, 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–24832 (May 7, 1997).

In the case of the State College Area, which is located in the OTR, nonattainment NSR will be applicable after redesignation. As discussed previously, EPA fully approved Pennsylvania's NSR SIP revision which applies the requirements for NSR of section 184 of the Clean Air Act to attainment areas within the OTR.

**3. The State College Area Has a Fully Approved SIP for the Purposes of Redesignation**

EPA has fully approved the Pennsylvania SIP for the purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. *Calcagni Memo*, p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See also, 68 FR at 25425 (May 12, 2003) and citations therein.

The State College Area was a 1-hour attainment/unclassifiable area at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004 (69 FR 23857). Because the State College Area was a 1-hour attainment/unclassifiable area, there are no previous Part D SIP submittal

requirements. Also, no Part D submittal requirements have come due prior to the submittal of the 8-hour maintenance plan for the area. Therefore, all Part D submittal requirements have been fulfilled. Because there are no outstanding SIP submission requirements applicable for the purposes of redesignation of the State College Area, the applicable implementation plan satisfies all pertinent SIP requirements. As indicated previously, EPA believes that the section 110 elements not connected with Part D nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable for purposes of redesignation have yet become due for the State College Area, and therefore they need not be approved into the SIP prior to redesignation.

*C. The Air Quality Improvement in the State College Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions*

EPA believes that the Commonwealth has demonstrated that the observed air quality improvement in the State College Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. Emissions reductions attributable to these rules are shown in Table 3.

**TABLE 3.—TOTAL VOC AND NO<sub>x</sub> EMISSIONS FOR 2002 AND 2004 IN TONS PER DAY (TPD)**

Year	Point	Area	Nonroad	Mobile	Total
<b>Volatile Organic Compounds (VOC)</b>					
Year 2002 .....	0.1	6.8	3.1	8.1	18.1
Year 2004 .....	0.1	6.7	3.1	7.0	16.9
Diff. (02–04) .....	0.0	–0.1	0.0	–1.1	–1.2
<b>Nitrogen Oxides (NO<sub>x</sub>)</b>					
Year 2002 .....	5.8	0.8	4.0	18.8	29.4
Year 2004 .....	3.8	0.9	3.8	16.8	25.3
Diff. (02–04) .....	–2.0	0.1	–0.2	–2.0	–4.1

Between 2002 and 2004, VOC emissions were reduced by 1.2 tpd, and NO<sub>x</sub> emissions were reduced by 4.1 tpd. These reductions and anticipated future reductions are due to the following permanent and enforceable measures implemented or in the process of being implemented in the State College Area:

1. Stationary Point Sources  
Federal NO<sub>x</sub> SIP Call (66 FR 43795, August 21, 2001).
2. Stationary Area Sources  
Solvent Cleaning (68 FR 2206, January 16, 2003).  
Portable Fuel Containers (69 FR 70893, December 8, 2004).
3. Highway Vehicle Sources

- Federal Motor Vehicle Control Programs (FMVCP).
  - Tier 1 (56 FR 25724, June 5, 1991)
  - Tier 2 (65 FR 6698, February 10, 2000)
- Heavy Duty Engines and Vehicles Standards (62 FR 54694, October 21, 1997 and 65 FR 59896, October 6, 2000).
- National Low Emission Vehicle

(NLEV) (64 FR 72564, December 28, 1999).

Vehicle Safety Inspection Program (70 FR 58313, October 6, 2005).

#### 4. Nonroad Sources

Nonroad Diesel Engine and Fuel (69 FR 38958, June 29, 2004).

EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the area achieving attainment of the 8-hour ozone standard.

#### *D. The State College Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the Clean Air Act*

In conjunction with its request to redesignate the State College Area to attainment status, Pennsylvania submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the State College Area for at least 10 years after redesignation. Pennsylvania is requesting that EPA approve this SIP revision as meeting the requirement of section 175A of the Clean Air Act. Once approved, the maintenance plan for the 8-hour ozone NAAQS will ensure that the SIP for the State College Area meets the requirements of the Clean Air Act regarding maintenance of the applicable 8-hour ozone standard.

What is required in a maintenance plan?

Section 175A of the Clean Air Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the next 10-year period following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the Clean Air Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memo provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(1) An attainment emissions inventory;

(2) A maintenance demonstration;

(3) A monitoring network;  
(4) Verification of continued attainment; and  
(5) A contingency plan.

Analysis of the State College Area Maintenance Plan

(a) Attainment Inventory—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. An attainment year of 2004 was used for the State College Area since it is a reasonable year within the 3-year block of 2002–2004 and accounts for reductions attributable to implementation of the Clean Air Act requirements to date. The 2004 inventory is consistent with EPA guidance and is based on actual “typical summer day” emissions of VOC and NO<sub>x</sub> during 2004 and consists of a list of sources and their associated emissions.

PADEP prepared comprehensive VOC and NO<sub>x</sub> emissions inventories for the State College Area, including point, area, mobile on-road, and mobile non-road sources for a base year of 2002.

To develop the NO<sub>x</sub> and VOC base year emissions inventories, PADEP used the following approaches and sources of data:

(i) *Point source emissions*—Pennsylvania requires owners and operators of larger facilities to submit annual production figures and emission calculations each year. Throughput data are multiplied by emission factors from Factor Information Retrieval (FIRE) Data System and EPA’s publication series AP-42 and are based on Source Classification Code (SCC). Each process has at least one SCC assigned to it. If the owners and operators of facilities provide more accurate emission data based upon other factors, these emission estimates supersede those calculated using SCC codes.

(ii) *Area source emissions*—Area source emissions are generally estimated by multiplying an emission factor by some known indicator or collective activity for each area source category at the county level. Pennsylvania estimates emissions from area sources using emission factors and SCC codes in a method similar to that used for stationary point sources. Emission factors may also be derived from research and guidance documents if those documents are more accurate than FIRE and AP-42 factors. Throughput estimates are derived from county-level activity data, by apportioning national and statewide activity data to counties, from census numbers, and from county employee numbers. County employee numbers are

based upon North American Industry Classification System (NAICS) codes to establish that those numbers are specific to the industry covered.

(iii) *On-road mobile sources*—PADEP employs an emissions estimation methodology that uses current EPA-approved highway vehicle emission model, MOBILE 6.2, to estimate highway vehicle emissions. The State College Area highway vehicle emissions in 2004 were estimated using MOBILE 6.2 and PENNDOT estimates of vehicles miles traveled (VMT) by vehicle type and roadway type.

(iv) *Mobile nonroad emissions*—The 2002 emissions for the majority of nonroad emission source categories were estimated using the EPA NONROAD 2005 model. The NONROAD model estimates emissions for diesel, gasoline, liquefied petroleum gasoline, and compressed natural gas-fueled nonroad equipment types and includes growth factors. The NONROAD model does not estimate emissions from aircraft or locomotives. For 2002 locomotive emissions, PADEP projected emissions from a 1999 survey using national fuel information and EPA emission and conversion factors. There are no commercial aircraft operations in the State College Area. For 2002 aircraft emissions, PADEP estimated emissions using small aircraft operation statistics from <http://www.airnav.com>, and emission factors and operational characteristics in the EPA-approved model, Emissions and Dispersion Modeling System (EDMS).

The 2004 attainment year VOC and NO<sub>x</sub> emissions for the State College Area are summarized along with the 2009 and 2018 projected emissions for this area in Tables 4 and 5, which cover the demonstration of maintenance for this area. EPA has concluded that Pennsylvania has adequately derived and documented the 2004 attainment year VOC and NO<sub>x</sub> emissions for this area.

(b) *Maintenance Demonstration*—On June 12, 2007, PADEP submitted a SIP revision to supplement its June 12, 2007 redesignation request. The submittal by PADEP consists of the maintenance plan as required by section 175A of the Clean Air Act. The State College Area plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO<sub>x</sub> remain at or below the attainment year 2004 emissions levels throughout the State College Area through the year 2018. A maintenance demonstration need not be based on modeling. See, *Wall v. EPA, supra*; *Sierra Club v. EPA, supra*. See also, 66 FR at 53099–53100; 68 FR at 25430–25432.



Tables 4 and 5 specify the VOC and NO<sub>x</sub> emissions for the State College Area for 2004, 2009, and 2018. PADEP chose 2009 as an interim year in the 10-

year maintenance demonstration period to demonstrate that the VOC and NO<sub>x</sub> emissions are not projected to increase above the 2004 attainment level during

the time of the 10-year maintenance period.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2004–2018 (TPD)

Source category	2004 VOC emissions	2009 VOC emissions	2018 VOC emissions
Mobile*	7.0	5.4	3.7
Nonroad	3.1	2.7	2.1
Area	6.7	6.4	6.7
Point	0.1	0.1	0.1
<b>Total</b>	<b>16.9</b>	<b>14.6</b>	<b>12.6</b>

\* Includes safety margin identified in the motor vehicle emission budgets for transportation conformity.

TABLE 5.—TOTAL NO<sub>x</sub> EMISSIONS 2004–2018 (TPD)

Source category	2004 NO <sub>x</sub> emissions	2009 NO <sub>x</sub> emissions	2018 NO <sub>x</sub> emissions
Mobile*	16.8	12.5	6.0
Nonroad	3.8	3.2	1.9
Area	0.9	0.9	0.9
Point	3.8	6.7	7.7
<b>Total</b>	<b>25.3</b>	<b>23.3</b>	<b>16.5</b>

\* Includes safety margin identified in the motor vehicle emission budgets for transportation conformity.

The following programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

1. Pennsylvania's Portable Fuel Containers (69 FR 70893, December 8, 2004).
2. Pennsylvania's Consumer Products (69 FR 70895, December 8, 2004).
3. Pennsylvania's Architectural and Industrial Maintenance (AIM) Coatings (69 FR 68080, November 23, 2004).
4. Federal NO<sub>x</sub> SIP Call (66 FR 43795, August 21, 2001).
5. Federal Clean Air Interstate Rule (71 FR 25328, April 28, 2006).
6. FMVCP for passenger vehicles and light-duty trucks and cleaner gasoline (2009 and 2018 fleet)—Tier 1 and Tier 2 (56 FR 25724, June 5, 1991 and 65 FR 6698, February 10, 2000).
7. NLEV Program, which includes the Pennsylvania's Clean Vehicle Program for passenger vehicles and light-duty trucks (69 FR 72564, December 28, 1999)—proposed amendments to move the implementation to model year (MY) 2008.
8. Heavy duty diesel on-road (2004/2007) and low-sulfur on-road (2006) (66 FR 5002, January 18, 2001).
9. Non-road emissions standards (2008) and off-road diesel fuel (2007/2010) (69 FR 38958, June 29, 2004).

Based upon the comparison of the projected emissions and the attainment year emissions along with the additional

measures, EPA concludes that PADEP has successfully demonstrated that the 8-hour ozone standard should be maintained in the State College Area.

(c) Monitoring Network—There is currently one monitor measuring ozone in the State College Area. Pennsylvania will continue to operate its current air quality monitor in accordance with 40 CFR part 58.

(d) Verification of Continued Attainment—The Commonwealth will track the attainment status of the ozone NAAQS in the State College Area by reviewing air quality and emissions during the maintenance period. The Commonwealth will perform an annual evaluation of two key factors, vehicle miles traveled (VMT) data and emissions reported from stationary sources, and compare them to the assumptions about these factors used in the maintenance plan. The Commonwealth will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR part 51, Subpart A) to see if the area exceeds the attainment year inventory (2004) by more than 10 percent. Based on these evaluations, the Commonwealth will consider whether any further emission control measures should be implemented.

(e) The Maintenance Plan's Contingency Measures—The contingency plan provisions are designed to promptly correct a violation

of the NAAQS that occurs after redesignation. Section 175A of the Clean Air Act requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would "trigger" the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

The ability of the State College Area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO<sub>x</sub> emissions in the area remaining at or below 2004 levels. The Commonwealth's maintenance plan projects VOC and NO<sub>x</sub> emissions to decrease and stay below 2004 levels through the year 2018. The Commonwealth's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

Contingency measures will be considered if for two consecutive years the fourth highest eight-hour ozone concentrations at the State College Area monitor are above 84 ppb. If this trigger point occurs, the Commonwealth will

evaluate whether additional local emission control measures should be implemented in order to prevent a violation of the air quality standard. PADEP will analyze the conditions leading to the excessive ozone levels and evaluate what measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of Federal, State and local measure that have been adopted but not yet implemented at the time of excessive ozone levels occurred. PADEP will then begin the process of implementing any selected measures.

Contingency measures will be considered in the event that a violation of the 8-hour ozone standard occurs at the State College County, Pennsylvania monitor. In the event of a violation of the 8-hour ozone standard, contingency measures will be adopted in order to return the area to attainment with the standard. Contingency measures to be considered for the State College Area will include, but not limited to the following:

*Non-regulatory measures:*

- Voluntary diesel engine “chip reflash”—installation software to correct the defeat device option on certain heavy duty diesel engines.
- Diesel retrofit, including replacement, repowering or alternative fuel use, for public or private local onroad or offroad fleets.
- Idling reduction technology for Class 2 yard locomotives.
- Idling reduction technologies or strategies for truck stops, warehouses and other freight-handling facilities.
- Accelerated turnover of lawn and garden equipment, especially commercial equipment, including promotion of electric equipment.
- Additional promotion of alternative fuel (e.g., biodiesel) for home heating and agricultural use.

*Regulatory measures:*

- Additional controls on consumer products.
- Additional control on portable fuel containers.

The plan lays out a process to have any regulatory contingency measures in effect within 19 months of the trigger. The plan also lays out a process to implement the non-regulatory contingency measures within 12–24 months of the trigger.

## **VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Maintenance Plan for the State College Area Adequate and Approvable?**

### *A. What Are the Motor Vehicle Emissions Budgets?*

Under the Clean Air Act, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (i.e. RFP SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. Pursuant to 40 CFR part 93 and § 51.112, MVEBs must be established in an ozone maintenance plan. A MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. A MVEB serves as a ceiling on emissions from an area’s planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

Under section 176(c) of the Clean Air Act, new transportation projects, such as the construction of new highways, must “conform” to (i.e., be consistent with) the part of the State’s air quality plan that addresses pollution from cars and trucks. “Conformity” to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the NAAQS. If a transportation plan does not “conform,” most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and ensuring conformity of such transportation activities to a SIP.

When reviewing submitted “control strategy” SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein “adequate” for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by State and Federal agencies in determining whether proposed transportation projects “conform” to the SIP as required by section 176(c) of the Clean Air Act. EPA’s substantive criteria for

determining “adequacy” of a MVEB are set out in 40 CFR 93.118(e)(4).

EPA’s process for determining “adequacy” consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA’s adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA’s May 14, 1999 guidance, “Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.” This guidance was finalized in the Transportation Conformity Rule Amendments for the “New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change” on July 1, 2004 (69 FR 40004). EPA consults this guidance and follows this rulemaking in making its adequacy determinations.

The MVEBs for the State College Area are listed in Table 1 of this document for the 2004, 2009, and 2018 years and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs. These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

### *B. What Is a Safety Margin?*

A “safety margin” is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The following example is for the 2018 safety margin: The State College Area first attained the 8-hour ozone NAAQS during the 2002 to 2004 time period. The Commonwealth used 2004 as the year to determine attainment levels of emissions for the State College Area.

The total emissions from point, area, mobile on-road, and mobile non-road sources in 2004 equaled 16.9 tpd of VOC and 25.3 tpd of NO<sub>x</sub>. PADEP projected emissions out to the year 2018 and projected a total of 12.6 tpd of VOC and 16.5 tpd of NO<sub>x</sub> from all sources in the State College Area. The safety margin for the State College Area for 2018 would be the difference between these amounts, or 4.3 tpd of VOC and 8.8 tpd of NO<sub>x</sub>. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area’s air quality consistent with the 8-hour ozone NAAQS. The

safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by

various sources as long as the total emission levels are maintained at or below the attainment levels. Table 6

shows the safety margins for the 2009 and 2018 years.

TABLE 6.—2009 AND 2018 SAFETY MARGINS FOR THE STATE COLLEGE AREA

Inventory year	VOC emissions (tpd)	NO <sub>x</sub> emissions (tpd)
2004 Attainment .....	16.9	25.3
2009 Interim .....	14.6	23.3
2009 Safety Margin .....	2.3	2.0
2004 Attainment .....	16.9	25.3
2018 Final .....	12.6	16.5
2018 Safety Margin .....	4.3	8.8

PADEP allocated 0.4 tpd NO<sub>x</sub> and 0.3 tpd VOC to the 2009 interim VOC projected on-road mobile source emissions projection and the 2009 interim NO<sub>x</sub> projected on-road mobile source emissions projection to arrive at

the 2009 MVEBs. For the 2018 MVEBs the PADEP allocated 0.5 tpd NO<sub>x</sub> and 0.4 tpd VOC from the 2018 safety margins to arrive at the 2018 MVEBs. Once allocated to the mobile source budgets these portions of the safety

margins are no longer available, and may no longer be allocated to any other source category. Table 7 shows the final 2009 and 2018 MVEBs for the State College Area.

TABLE 7.—2009 AND 2018 FINAL MVEBs FOR THE STATE COLLEGE AREA

Inventory year	VOC emissions (tpd)	NO <sub>x</sub> emissions (tpd)
2009 projected on-road mobile source projected emissions .....	5.1	12.1
2009 Safety Margin Allocated to MVEBs .....	0.3	0.4
2009 MVEBs .....	5.4	12.5
2018 projected on-road mobile source projected emissions .....	3.3	5.5
2018 Safety Margin Allocated to MVEBs .....	0.4	0.5
2018 MVEBs .....	3.7	6.0

*C. Why Are the MVEBs Approvable?*

The 2004, 2009 and 2018 MVEBs for the State College Area are approvable because the MVEBs for NO<sub>x</sub> and VOC, including the allocated safety margins, continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

*D. What Is the Adequacy and Approval Process for the MVEBs in the State College Area Maintenance Plan?*

The MVEBs for the State College Area maintenance plan are being posted to EPA's conformity Web site concurrent with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan update and associated MVEBs are approved in a final **Federal**

**Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the State College Area MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the State College Area MVEBs will also be announced on EPA's conformity Web site: <http://www.epa.gov/otaq/stateresources/transconf/index.htm> (once there, click on "Adequacy Review of SIP Submissions").

**VIII. Proposed Actions**

EPA is proposing to determine that the State College Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the Commonwealth's June 12, 2007 request for the State College Area to be redesignated to attainment of the 8-hour NAAQS for ozone. EPA has evaluated Pennsylvania's redesignation request and determined that it meets the redesignation criteria set forth in section

107(d)(3)(E) of the Clean Air Act. EPA believes that the redesignation request and monitoring data demonstrate that the area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the State College Area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan and the 2002 base year inventory for State College Area, submitted on June 12, 2007, as revisions to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan for the State College Area because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the MVEBs submitted by Pennsylvania for the State College Area in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

**IX. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 (Pub. L. 104-4). Because this action affects the status of a geographical area, does not impose any new requirements on sources, or allows the state to avoid adopting or implementing other requirements, this proposed rule also does 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), nor will it 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), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean

Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

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. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order.

This rule proposing to approve the redesignation of the State College Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base year inventory, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

##### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: August 30, 2007.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. E7-17890 Filed 9-10-07; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-SFUND-1990-0011; FRL-8465-3]

### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent for partial deletion of a portion of the Seneca Army Depot Activity Superfund Site from the National Priorities List.

**SUMMARY:** The United States Environmental Protection Agency (EPA) announces its intent to delete from the National Priorities List (NPL) all media (surface soils, subsurface soils, structures, surface water, and ground water) within the following two specific parcels of real property located at the Seneca Army Depot Activity (SEDA) Superfund Site (Site), Romulus, New York: Real Estate Parcel 1, except for a portion of this parcel known as SEAD-24; and the entirety of Real Estate Parcel 2. EPA requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York, through its Department of Environmental Conservation (the State), have determined that all appropriate CERCLA response actions related to Parcel 1 (except the SEAD-24 portion) and Parcel 2 have been implemented. This partial deletion pertains only to Parcel 1 (except the SEAD-24 portion) and Parcel 2, and does not include any other portions of the Site. The portion of Parcel 1 known as SEAD-24 is not proposed for deletion at this time. Figure one (in the deletion docket) shows a map of Real Estate Parcels 1 and 2, and delineates between those areas being proposed for deletion and those areas that will remain on the NPL.

The purpose of the proposed deletion of Parcel 1 (except the SEAD-24 portion) and Parcel 2 is to remove uncontaminated and potentially useful property from the NPL, thereby making