

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 implements requirements specifically set forth by the Congress in the Federal Clean Air Act without the exercise of any discretion by EPA. However, today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any new requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

#### G. 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 E.O. 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.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the order has the potential to influence the regulation.

This rule is not subject to E.O. 13045 because it implements a previously promulgated health or safety-based Federal standard.

#### H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 21, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental Relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: April 14, 1999.

**Carol M. Browner,**

*Administrator.*

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

#### PART 52—[AMENDED]

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

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

#### Subpart SS—Texas

2. Section 52.2308 is amended by adding paragraph (g) to read as follows:

#### § 52.2308 Area-wide nitrogen oxides (NO<sub>x</sub>) exemptions.

\* \* \* \* \*

(g) The Texas Natural Resource Conservation Commission submitted a letter to EPA requesting rescission of the previously-granted conditional exemption from the NO<sub>x</sub> control requirements of section 182(f) of the Act for the Dallas/Fort Worth ozone nonattainment area. The letter was sent on November 13, 1998. The conditional exemption was granted on November 21, 1994, conditioned upon EPA approving the modeling portion of the DFW attainment demonstration SIP. The conditional exemption was also approved on a contingent basis. The modeling-based exemption would last only as long as the area's modeling continued to demonstrate attainment without the additional NO<sub>x</sub> reductions required by section 182(f). The State's request is based on new photochemical modeling which shows the need for NO<sub>x</sub> controls to help the area attain the ozone National Ambient Air Quality Standards. Furthermore, EPA would not and could not approve the earlier attainment demonstration SIP modeling upon which the condition was based.

(1) On June 21, 1999, the conditional NO<sub>x</sub> exemption for the DFW area granted on November 21, 1994 is rescinded. Upon rescission, the Federal requirements pertaining to NO<sub>x</sub> Reasonably Available Control Technology (RACT), New Source Review, vehicle Inspection/Maintenance, general and transportation conformity now apply.

(2) The NO<sub>x</sub> RACT final compliance date must be implemented as

expeditiously as practicable, but no later than March 31, 2001.

[FR Doc. 99-9868 Filed 4-19-99; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[OH 122-1a; FRL-6328-6]

#### Approval and Promulgation of Maintenance Plan Revisions; Ohio

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

**ACTION:** Direct final rule.

**SUMMARY:** We are approving a March 18, 1999 request from Ohio for a State Implementation Plan (SIP) revision of the Stark County (Canton, Ohio) ozone maintenance plan. The maintenance plan revision establishes new transportation conformity mobile source emissions budgets for the year 2005. We are approving the allocation of a portion of the safety margin for volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>) to the area's 2005 mobile source emissions budgets for transportation conformity purposes. This allocation will still maintain the total emissions for the area at or below the attainment level required by the transportation conformity regulations.

**DATES:** This rule is effective on June 21, 1999, unless EPA receives adverse written comments by May 20, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Patricia Morris at (312) 353-8656 before visiting the Region 5 office.

#### FOR FURTHER INFORMATION CONTACT:

Patricia Morris, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency,

Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8656.

**SUPPLEMENTARY INFORMATION:** This Supplementary Information section is organized as follows:

- What action is EPA taking today?
- Who is affected by this action?
- How did the State support its request?
- What is transportation conformity?
- What is an emissions budget?
- What is a safety margin?
- How does this action change the Stark County maintenance plan?
- Why is the request approvable?

#### **What Action is EPA Taking Today?**

In this action, we are approving a revision to the maintenance plan for Stark County, Ohio. The revision will change the mobile source emission budget that is used for transportation conformity purposes. The revision will keep the total emissions for the area at or below the attainment level required by law. This action will allow State or local agencies to maintain air quality while providing for transportation growth.

#### **Who is Affected by This Action?**

Primarily, the transportation sector represented by Ohio Department of Transportation and the Stark County metropolitan planning organization will benefit from this revision. Although, the long range transportation plan for the Stark County area projects higher emissions than currently allowed in the maintenance plan, the conformity rule provides that if a "safety margin" exists in the maintenance plan, then the safety margin can be allocated to the transportation sector via the mobile source budget.

#### **How Did the State Support This Request?**

On March 18, 1999, Ohio submitted to EPA a SIP revision request for the Stark County ozone maintenance area. A public hearing on this proposal was held on February 18, 1999. No one from the public commented on the proposed revisions.

In the submittal, Ohio requested to establish new 2005 mobile source emissions budgets for both VOC and NO<sub>x</sub> for the Stark County, Ohio, ozone maintenance area. The State requested that 2 tons per day of VOC and 1 ton per day of NO<sub>x</sub> be allocated from the maintenance plan's safety margin. The mobile source budgets are used for transportation conformity purposes.

#### **What is Transportation Conformity?**

Transportation conformity means that the level of emissions from the transportation sector (cars, trucks and

buses) must be consistent with the requirements in the SIP to attain and maintain the air quality standards. The Clean Air Act, in section 176(c), requires conformity of transportation plans, programs and projects to an implementation plan's purpose of attaining and maintaining the National Ambient Air Quality Standards. On November 24, 1993, EPA published a final rule establishing criteria and procedures for determining if transportation plans, programs and projects funded or approved under Title 23 U.S.C. or the Federal Transit Act conform to the SIP.

The transportation conformity rules require an ozone maintenance area, such as Stark County, to compare the actual projected emissions from cars, trucks and buses on the highway network, to the mobile source emissions budget established by a maintenance plan. The Stark County area has an approved maintenance plan. Our approval of the maintenance plan established the mobile source emissions budgets for transportation conformity purposes.

#### **What is an Emissions Budget?**

An emissions budget is the projected level of controlled emissions from the transportation sector (mobile sources) that is estimated in the SIP. The SIP controls emissions through regulations, for example, on fuels and exhaust levels for cars. The emissions budget 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 the mobile source emissions budget in the SIP and how to revise the emissions budget. The transportation conformity rule allows the mobile source emissions budget to be changed as long as the total level of emissions from all sources remains below the attainment level.

#### **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 air quality health standard. For example: Stark County attained the one hour ozone standard during the 1989-1991 time period. The State uses 1990 as the attainment level of emissions for Stark County. The emissions from point, area and mobile sources in 1990 equaled 86.67 tons per day of VOC and 39.81 tons per day of NO<sub>x</sub>. The Ohio

Environmental Protection Agency projected emissions out to the year 2005 and projected a total of 73.61 tons per day of VOC and 37.64 tons per day of NO<sub>x</sub> from all sources in Stark County. The safety margin for Stark County is calculated to be the difference between these amounts or 13.06 tons per day of VOC and 2.17 tons per day of NO<sub>x</sub>. Table 1 gives detailed information on the estimated emissions from each source category and the safety margin calculation.

The 2005 emission projections reflect the point, area and mobile source reductions and are illustrated in Table 1.

**TABLE 1.—NO<sub>x</sub> AND VOC EMISSIONS BUDGET; AND SAFETY MARGIN TERMINATIONS, STARK COUNTY**  
[tons/day]

Source category	VOC emissions	
	1990	2005
Point .....	12.36	14.07
Mobile (on-road) .....	31.66	15.34
Area .....	42.65	44.20
Totals .....	86.67	73.61

*Safety Margin = 1990 total emissions—2005 total emissions = 13.06 tons/day VOC*

Source category	NO <sub>x</sub> emissions	
	1990	2005
Point .....	6.74	7.96
Mobile (on-road) .....	16.20	12.00
Area .....	16.87	17.68
Totals .....	39.81	37.64

*Safety Margin = 1990 total emissions—2005 total emissions = 2.17 tons/day NO<sub>x</sub>*

The emissions are projected to maintain the area's air quality consistent with the air quality health standard. The safety margin credit can be allocated to the transportation sector. The total emission level, even with this allocation will be below the attainment level or safety level and thus is acceptable. The safety margin is the extra safety [points] that can be allocated as long as the total level is maintained.

#### **How Does This Action Change the Stark County Maintenance Plan?**

It raises the budget for mobile sources. The maintenance plan is designed to provide for future growth while still maintaining the ozone air quality standard. Growth in industries, population, and traffic is offset with

reductions from cleaner cars and other emission reduction programs. Through the maintenance plan the State and local agencies can manage and maintain air quality while providing for growth.

In the submittal, Ohio requested to allocate part of the area's safety margin to the mobile source emissions budget. The Stark County area's safety margin is the difference between the 1990 attainment inventory year and the 2005 projected emissions inventory (13.06 tons/day VOC safety margin, and 2.17 tons/day NO<sub>x</sub> safety margin) as shown in Table 1. The SIP revision requests the allocation of 2 tons/day VOC, and 1 ton/day NO<sub>x</sub>, into the area's mobile source emissions budgets from the safety margin. The 2005 mobile source emissions budgets showing the safety margin allocations are outlined in Table 2. The mobile source emissions budget in Table 2 will be used for transportation conformity purposes.

Table 2 below illustrates that the requested portion of the safety margins can be allocated to the 2005 mobile source budget and that total emissions will still remain at or below the 1990 attainment level of total emissions for the Stark County maintenance area. Since the area would still be at or below the 1990 attainment level for the total emissions, this allocation is allowed by the conformity rule.

TABLE 2.—ALLOCATION OF SAFETY MARGIN TO THE 2005 MOBILE SOURCE EMISSIONS BUDGET, STARK COUNTY

[tons/day]

Source category	VOC emissions	
	1990	2005
Point .....	12.36	14.07
Mobile (on-road) .....	31.66	17.34
Area .....	42.65	44.20
Totals .....	86.67	75.61

*Remaining Safety Margin = 1990 total emissions—2005 total emissions = 11.06 tons/day VOC.*

Source category	NO <sub>x</sub> emissions	
	1990	2005
Point .....	6.74	7.96
Mobile (on-road) .....	16.20	13.00
Area .....	16.87	17.68
Totals .....	39.81	38.64

*Remaining Safety Margin = 1990 total emissions—2005 total emissions = 1.17 tons/day NO<sub>x</sub>*

### Why is the Request Approvable?

After review of the SIP revision request, EPA finds that the requested allocation of the safety margin for the Stark County (Canton) area is approvable because the new mobile source emissions budgets for NO<sub>x</sub> and VOCs maintain the total emissions for the area at or below the attainment year inventory level as required by the transportation conformity regulations. This allocation is allowed by the conformity rule since the area would still be at or below the 1990 attainment level for the total emissions.

### EPA Action

EPA is approving the requested allocation of the safety margin to the mobile source budget for the Stark County (Canton) ozone maintenance area.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by May 20, 1999. Should the Agency receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on June 21, 1999.

### Administrative Requirements

#### A. Executive Order 12866

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

#### B. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written

communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

#### C. 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 E.O.

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. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation.

This action is not subject to E.O. 13045 because it approves a state rule implementing a previously promulgated health or safety-based Federal standard, and preserves the existing level of pollution control for the affected areas.

#### D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 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. If the mandate is unfunded, EPA must 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, E.O. 13084 requires EPA to develop an effective process permitting elected 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." This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

#### *E. Regulatory Flexibility Act*

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 final 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); 42 U.S.C. 7410(a)(2).

#### *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 annual costs to State, local, or tribal governments in the aggregate; or to 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 annual 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 rule is not a "major" rule as defined by 5 U.S.C. 804(2).

#### *H. Paperwork Reduction Act*

This action does not contain any information collection requirements which requires OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### *I. Executive Order 12898: Environmental Justice*

Under E.O. 12898 each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. Today's action (revising the emissions budgets in Ohio's maintenance plan for Stark County) does not adversely affect minorities and low-income populations because the new, more stringent 8-hour ozone standard is in effect and provides increased protection to the public,

especially children and other at-risk populations.

#### *J. 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 new regulations. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

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.

#### *K. 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 June 21, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Ozone, Nitrogen oxides, Transportation conformity.

Dated: April 8, 1999.

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*

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

#### **PART 52—[AMENDED]**

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

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

#### **Subpart KK—Ohio**

2. Section 52.1885 is amended by adding paragraph (a)(11) to read as follows:

##### **§ 52.1885 Control Strategy: Ozone**

(a) \* \* \*

(11) Approval—On March 18, 1999, Ohio submitted a revision to the

maintenance plan for the Stark County (Canton) area. The revision consists of allocating a portion of the Stark County area's safety margins to the transportation conformity mobile source emissions budgets. The mobile source budgets for transportation conformity purposes for the Stark County area are now: 17.34 tons per day of volatile organic compound emissions for the year 2005 and 13.00 tons per day of oxides of nitrogen emissions for the year 2005.

[FR Doc. 99-9866 Filed 4-19-99; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[KY111-9914a; FRL-6326-1]

#### Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Kentucky

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the Section 111(d) Plan submitted by the Kentucky Division for Air Quality (DAQ) for the Commonwealth of Kentucky on December 3, 1998, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Solid Waste (MSW) Landfills.

**DATES:** This direct final rule is effective on June 21, 1999 without further notice, unless EPA receives significant, material, and adverse comment by May 20, 1999. If EPA receives adverse comment, we 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 should be addressed to: Karla McCorkle, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

Copies of materials submitted to EPA may be examined during normal business hours at the following locations: EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960; and at the Kentucky Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

**FOR FURTHER INFORMATION CONTACT:**  
Karla McCorkle at (404) 562-9043 or  
Scott Davis at (404) 562-9127.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Under section 111(d) of the Clean Air Act (Act), EPA has established procedures whereby States submit plans to control certain existing sources of "designated pollutants." Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not "criteria pollutants" (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, EPA establishes EG in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the "designated facility" as defined at 40 CFR 60.21(b)). Thus, a State, local, or tribal agency's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759). (See 61 FR 9905-9944.) The pollutants regulated by the NSPS and EG are MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. To determine whether control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing

MSW landfill (as defined in 40 CFR 60.32c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), States were required to either: (1) submit a plan for the control of the designated pollutant to which the EG applies; or (2) submit a negative declaration if there were no designated facilities in the State within nine months after publication of the EG (by December 12, 1996).

EPA has been involved in litigation over the requirements of the MSW landfill EG and NSPS since the summer of 1996. On November 13, 1997, EPA issued a notice of proposed settlement in *National Solid Wastes Management Association v. Browner, et al.*, No. 96-1152 (D.C. Cir), in accordance with section 113(g) of the Act. See 62 FR 60898. It is important to note that the proposed settlement does not vacate or void the existing MSW landfill EG or NSPS. Pursuant to the proposed settlement agreement, EPA published a direct final rulemaking on June 16, 1998, in which EPA is amending 40 CFR part 60, subparts Cc and WWW, to add clarifying language, make editorial amendments, and to correct typographical errors. See 63 FR 32743-32753, 32783-32784. EPA regulations at 40 CFR 60.23(a)(2) provide that a State has nine months to adopt and submit any necessary State Plan revisions after publication of a final revised emission guideline document. Thus, States are not yet required to submit State Plan revisions to address the June 16, 1998, direct final amendments to the EG. In addition, as stated in the June 16, 1998, preamble, the changes to 40 CFR part 60, subparts Cc and WWW, do not significantly modify the requirements of those subparts. See 63 FR 32744. Accordingly, the MSW landfill EG published on March 12, 1996, was used as a basis by EPA for review of section 111(d) Plan submittals.

This action approves the section 111(d) Plan submitted by the Kentucky DAQ for the Commonwealth of Kentucky to implement and enforce Subpart Cc.

##### II. Discussion

The Kentucky DAQ submitted to EPA on December 3, 1998, the following in their section 111(d) Plan for implementing and enforcing the emission guidelines for existing MSW landfills in the Commonwealth of Kentucky: Statutory and Legal Authority; Enforceable Mechanisms; MSW Landfill Source and Emissions Inventory; Emission Limitations; Process for Review and Approval of Collection and Control System Design