

FOR FURTHER INFORMATION CONTACT: Ed Addison U.S. EPA Region IX, at (415) 744-1160.

Dated: April 21, 1999.

Laura Yoshii,

Deputy, Regional Administrator, Region IX.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI90-01-7321; FRL-6339-3]

Approval and Promulgation of Maintenance Plan Revisions; Wisconsin

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: We propose approval of a February 22, 1999, request from Wisconsin for State Implementation Plan (SIP) revisions to the ozone maintenance plans for Kewaunee, Sheboygan and Walworth Counties. The revisions would remove the contingency measures from the contingency plan portion of the maintenance plans.

DATES: Written comments on this proposal must be received on or before June 9, 1999.

ADDRESSES: Written comments should be sent to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection 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 Jacqueline Nwia at (312) 886-6081 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Jacqueline Nwia, 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) 886-6081.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

What action is USEPA taking?

What is the background?

What information did the State submit?

Why is the request approvable?

What Action Is USEPA Taking?

We propose approval of revisions to the ozone maintenance plans for Kewaunee, Sheboygan and Walworth Counties, Wisconsin. The revisions remove the contingency measures from the contingency plan portion of the ozone maintenance plans.

What Is the Background?

USEPA designated Kewaunee, Sheboygan and Walworth Counties as nonattainment for the one-hour ozone National Ambient Air Quality Standard (NAAQS) in 1991. Since then, these Counties attained the one-hour ozone standard and USEPA redesignated them to attainment on August 26, 1996 (61 FR 43668). As part of the redesignation, Wisconsin submitted maintenance plans which USEPA approved into the SIP. The purpose of the maintenance plans is to ensure maintenance of the one-hour ozone NAAQS through the 10 year maintenance period. The maintenance plan contains contingency measures. Contingency provisions should identify and correct any violation of the one-hour ozone NAAQS in a timely fashion. Triggers are included in the contingency provisions. These triggers identify the need to implement contingency measures to correct an air quality problem. Triggering events may be linked to ozone air quality and/or an emission level of ozone precursors. The contingency measures would be implemented to correct a violation of the one-hour ozone standard.

We approved the maintenance plans for Kewaunee, Sheboygan and Walworth Counties on August 26, 1996 (61 FR 43668).

What Information Did the State Submit?

On February 22, 1999, Wisconsin submitted a request to revise the Kewaunee, Sheboygan and Walworth County ozone maintenance plans. Specifically, the State requested removal of the following contingency measures from the Kewaunee and Sheboygan County maintenance plans:

- (1) Lower the major source threshold for industrial sources, and
 - (2) Implement gasoline standards to lower volatile organic compound emissions.
- For Walworth County, the State requested removal of the following contingency measures from the maintenance plan:
- (1) Implement Stage II vapor recovery, and
 - (2) Impose non-control technology guideline reasonably available control technology limits on industrial sources.

The State held a public hearing on October 27, 1998 in Milwaukee. The

State did not receive public comments on the proposed revision.

Why Is the Request Approvable?

We promulgated a new National Ambient Air Quality Standard (NAAQS) for ozone on July 18, 1998. The new ozone NAAQS is 0.08 parts per million (ppm), averaged over 8 hours, which replaced the 0.12 ppm, 1-hour NAAQS.

On July 16, 1997, President Clinton issued a directive to Administrator Browner (62 FR 38421). The directive describes a plan to implement the eight-hour ozone and fine particulate matter standards and continue to implement the one-hour standard. A December 29, 1997, memorandum entitled "Guidance for Implementing the 1-Hour and Pre-Existing PM10 NAAQS" reflected the President's directive. This document provides guidance for the transition from the one-hour to the eight-hour standard.

The guidance document explains that maintenance plans remain in effect for areas where the one-hour standard is revoked. However, those maintenance plans may be revised to withdraw untriggered or unimplemented contingency measure provisions linked to the one-hour ozone standard.

USEPA revoked the one-hour ozone standard in Kewaunee, Sheboygan and Kewaunee Counties based on 1994-1996 quality assured air monitoring data on June 5, 1998 (63 FR 31014). The contingency measures proposed for removal have neither been triggered nor implemented.

We deemed Wisconsin's SIP revision request complete on March 5, 1999.

USEPA Proposed Action

After review of the SIP revision request, we find that the requested removal of the contingency measures from the maintenance plans of Kewaunee, Sheboygan, and Walworth Counties is approvable because the 1-hour standard is no longer applicable in the area as a result of revocation of the standard and these contingency measures are untriggered and unimplemented. This request meets our guidance and policies. Written comments must be received by USEPA on or by June 9, 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 OMB 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 any 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 elective 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." This 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 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 or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on these 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 OMB 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.

D. 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.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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 proposed rule will not have a significant impact on a substantial number of small entities because plan approvals under section 111(d) of the Clean Air Act (Act) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal 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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The Act forbids EPA to base its actions 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, 2 U.S.C. 1532, 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.

The EPA has determined that the approval action of the revisions to the ozone maintenance plans for these counties 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.

VI. List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Nitrogen oxides, Implementation plans.

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

Dated: April 21, 1999.

William E. Munro,

Acting Regional Administrator, Region 5.

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 300**

[FRL-6338-4]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "the Act"), requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is