

Approved: August 26, 2009.

**John R. Gingrich,**

Chief of Staff, Department of Veterans Affairs.  
[FR Doc. E9-23021 Filed 9-23-09; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Parts 51, 52, 261, 262, 264, 265, and 270**

[FRL-8961-2]

RIN 2090-AA28

### New Jersey Gold Track Program Under Project XL

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

**ACTION:** Proposed rule: withdrawal.

**SUMMARY:** The Environmental Protection Agency (EPA) is withdrawing a proposed rule published on April 16, 2002, which would have modified the regulations under the Resource Conservation and Recovery Act (RCRA) and the Clean Air Act (CAA) to enable the implementation of the New Jersey Department of Environmental Protection (NJDEP) Gold Track Program that was developed under EPA's Project eXcellence in Leadership (Project XL) program. Project XL was a national pilot program that allowed state and local governments, businesses and federal facilities to develop with EPA more cost-effective ways of achieving environmental and public health protection. In exchange, EPA provided regulatory, policy or procedural flexibilities to conduct the pilot experiments. EPA is withdrawing the proposed rule in response to NJDEP's decision not to go forward with the Gold Track Program and not to promulgate an enabling rule. In the rule, EPA proposed to provide New Jersey with authority to provide high-performing companies in New Jersey with the regulatory flexibility to test environmental management strategies designed to produce improved and measurable results. The NJDEP had expressed interest in testing a program designed to achieve environmental excellence through commitments and accountability beyond standard regulatory requirements. Following EPA's April 16, 2002 proposal, the NJDEP communicated to EPA that it did not wish to implement the state rulemaking or the pilot project as originally envisioned. EPA received no public comments on this proposed rule.

**DATES:** The proposed rule published on April 16, 2002 at 67 FR 18528 is withdrawn as of September 24, 2009.

**FOR FURTHER INFORMATION CONTACT:** Gerald Filbin, Mail Code 1807T, U.S. Environmental Protection Agency, Office of Policy, Economics and Innovation, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Dr. Filbin's telephone number is (202) 566-2182 and his e-mail address is [filbin.gerald@epa.gov](mailto:filbin.gerald@epa.gov). Further information on today's action may also be obtained on the internet at <http://www.epa.gov/projectxl/njgold/index.htm>.

**SUPPLEMENTARY INFORMATION:** Regulatory Impact: Because this action withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or other Executive Orders and statutes that generally apply to those rulemakings.

The proposed rule, "New Jersey Gold Track Program Under Project XL," published on April 16, 2002 at 67 FR 18528 is withdrawn as of September 24, 2009.

Dated: September 16, 2009.

**Scott Fulton,**

Acting Deputy Administrator.

[FR Doc. E9-22924 Filed 9-23-09; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

[EPA-R05-OAR-2009-0664; FRL-8962-2]

### Approval and Promulgation of Air Quality Implementation Plans; The Chicago and Evansville Nonattainment Areas; Determination of Attainment of the Fine Particle Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that the Chicago (Illinois and Indiana) and Evansville (Indiana) areas have attained the 1997 fine particle (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS). The proposed determinations are based upon quality-assured, quality-controlled, and certified ambient air monitoring data that show that the areas have monitored attainment of the 1997 PM<sub>2.5</sub> NAAQS for the 2006 to 2008 monitoring period. Preliminary data for 2009 suggest that the areas continue to monitor attainment. If these proposed

determinations are made final, the requirements for these areas to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans (SIPs) revisions related to attainment of the standard shall be suspended for so long as the areas continue to attain the 1997 PM<sub>2.5</sub> NAAQS.

**DATES:** Comments must be received on or before October 26, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0664 by one of the following methods:

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

2. *E-mail:* [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

3. *Fax:* (312) 692-2551.

4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), 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.

*Instructions:* Direct your comments to Docket ID No. EPA-R05-OAR-2009-0664. 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. For additional instructions on submitting comments, go to I of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Melissa M. Barnhart by phone at (312) 353-8641 or by e-mail at [barnhart.melissa@epa.gov](mailto:barnhart.melissa@epa.gov) before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Melissa M. Barnhart, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8641, [barnhart.melissa@epa.gov](mailto:barnhart.melissa@epa.gov).

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

This supplementary information section is arranged as follows:

- I. What Should I Consider as I Prepare My Comments for EPA?
- II. What Action Is EPA Taking?
- III. What Is the Background for This Action?
- IV. Does EPA Believe that the Chicago and Evansville Areas Meet the Annual and 24-Hour PM<sub>2.5</sub> Standards?
  - A. Criteria
  - B. Chicago Area
  - C. Evansville Area
- V. What is the Effect of These Actions?
- VI. Statutory and Executive Order Reviews

## I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

## II. What Action Is EPA Taking?

EPA is proposing to determine that the Chicago area (including portions in Illinois and Indiana) and the Evansville, Indiana area have attained the 1997 PM<sub>2.5</sub> NAAQS. The proposed determinations are based upon quality-assured, quality-controlled, and certified ambient air monitoring data that show that the areas have monitored attainment of the 1997 PM<sub>2.5</sub> NAAQS for the 2006–2008 monitoring period. Preliminary data available to date for 2009 suggest that the areas continue to monitor attainment.

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

On July 18, 1997 (62 FR 36852), EPA established a health-based PM<sub>2.5</sub> NAAQS at 15.0 micrograms per cubic meter (µg/m<sup>3</sup>) based on a three-year average of annual mean PM<sub>2.5</sub> concentrations, and a 24-hour standard of 65 µg/m<sup>3</sup> based on a three-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter. The process for designating areas following promulgation of a new or revised NAAQS is contained in 107(d)(1) of the

Clean Air Act (CAA). EPA and State air quality agencies initiated the monitoring process for the 1997 PM<sub>2.5</sub> NAAQS in 1999, and developed all air quality monitors by January 2001. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 PM<sub>2.5</sub> NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Chicago area (known formally as the Chicago-Gary-Lake County, IL-IN area) and the Evansville area were designated nonattainment for the 1997 PM<sub>2.5</sub> NAAQS.

## IV. Does EPA Believe That the Chicago and Evansville Areas Meet the Annual and 24-Hour PM<sub>2.5</sub> Standards?

### A. Criteria

This rulemaking is assessing whether the Chicago and Evansville PM<sub>2.5</sub> nonattainment areas are attaining the PM<sub>2.5</sub> NAAQS that were promulgated in 1997. The Chicago non-attainment area includes portions in Illinois and portions in Indiana. The Illinois portion of this area is defined at 40 CFR 81.314, and the Indiana portion of this area as well as the Evansville area are defined at 40 CFR 81.315.

Under EPA regulations at 40 CFR Part 50, 50.7:

(1) The annual primary and secondary PM<sub>2.5</sub> standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR Part 50, Appendix N, is less than or equal to 15.0 µg/m<sup>3</sup> at all relevant monitoring sites in the subject area.

(2) The 24-hour primary and secondary PM<sub>2.5</sub> standards, as promulgated in 1997, are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR Part 50, Appendix N, is less than or equal to 65 µg/m<sup>3</sup> at all relevant monitoring sites in the subject area.

In 2006, EPA revised the 24-hour PM<sub>2.5</sub> standards to a level of 35 µg/m<sup>3</sup>. However, today's rulemaking only assesses whether the applicable areas are attaining the 1997 standards.

### B. Chicago Area

EPA has reviewed the ambient air monitoring data for the Chicago area in accordance with the provisions of 40 CFR Part 50 Appendix N. All data considered have been recorded in EPA's Air Quality System (AQS) database. This review primarily addresses air quality data collected in the three-year period from 2006 to 2008.

The following table provides both the annual average concentration and the 98th percentile 24-hour average

concentration averaged over 2006 to 2008 at all sites in the Chicago area, including sites in both Illinois and Indiana. The highest three-year average annual concentration for 2006 to 2008 on this table is recorded at the Schiller Park site, site number 17-031-3103,

recording a three-year average annual concentration of 14.6 µg/m<sup>3</sup>. The highest 98th percentile 24-hour average concentration is recorded at the McCook site, site number 17-031-1016, recording a three-year average 98th percentile 24-hour average

concentration of 35 µg/m<sup>3</sup>. All sites in the area have three-year average annual PM<sub>2.5</sub> concentrations below 15.0 µg/m<sup>3</sup> and three-year average 98th percentile 24-hour average concentrations far below the 1997 standard of 65 µg/m<sup>3</sup>.

TABLE 1—ANNUAL AND 24-HOUR AVERAGE CONCENTRATIONS IN THE CHICAGO AREA (IN µG/M<sup>3</sup>)

Site location	Site No.	Annual average concentration	24-Hour average concentration
East 114th .....	170310022	13.8	31
103rd & Luella .....	170310050	13.1	29
Mayfair Pumping Stn .....	170310052	14.1	33
Com Ed .....	170310057	13.6	31
Lawndale .....	170310076	13.2	32
McCook .....	170311016	**	35
Blue Island .....	170312001	13.3	31
Schiller Park .....	170313103	14.6	33
Summit .....	170313301	13.5	31
Des Plaines .....	170314007	11.8	29
Northbrook .....	170314201	11.7	30
Cicero .....	170316005	*(14.1)	33
Naperville .....	170434002	12.6	32
Elgin .....	170890003	11.9	33
Aurora .....	170890007	12.5	29
Zion .....	170971007	10.6	27
Cary .....	171110001	11.2	28
Joliet .....	171971002	12.8	32
Wilmington .....	171971011	10.7	26
E. Chicago .....	180890006	13.2	31
Gary-IITRI .....	180890022	**	31
Gary-Burr St .....	180890026	**	33
Griffith .....	180890027	12.4	29
Gary Water .....	180890031	13.3	31
Gary-Ivanhoe .....	180891003	13.3	30
Hammond-Purdue .....	180892004	12.7	30
Hammond-Davis St .....	180892010	12.9	30
Dune Acres .....	181270020	12.0	29
Ogden Dunes .....	181270024	12.2	29

\* Data do not meet completeness requirements.

\*\* Data are not to be compared to the annual NAAQS.

Under 40 CFR 58.30(a)(1), for sites with data that are representative of relatively unique, generally localized concentrations, the data are compared only to the 24-hour NAAQS, not to the annual NAAQS. Illinois has one site and Indiana has two sites representing localized concentrations near industrial facilities, and EPA agrees with the States that data at these sites are not to be compared to the annual standard.<sup>1</sup> Illinois has also requested that the Schiller Park site (site number 17-031-3103) be designated as collecting data that is not to be compared to the annual standard. EPA is not judging whether this designation is appropriate. The applicable regulation, at 40 CFR

58.30(a)(2), recognizes that some microscale sites collect data that is representative of multiple locations with localized high concentrations, and provides in these cases that the data are to be compared to the annual standard. The Schiller Park site is near a major highway, and the site may be representative of multiple locations in the Chicago area that have similar proximity to major highways. For this reason, the table above includes annual average concentrations at this site. In any case, the site shows an annual average concentration that meets the annual standard, so that the designation of this site does not influence EPA's finding that the area is attaining the annual standard.

Further consideration of concentrations at Cicero, site 17-031-6005, is necessary because data at this site do not meet completeness requirements, and because the site monitored a violation for the most

recent three years with complete data, *i.e.* 2005 to 2007. Under 40 CFR 50 Appendix N 4.1 (addressing the annual standard), a year meets completeness requirements when "at least 75 percent of the scheduled sampling days for each quarter has valid data." This site collected only 50 percent of its scheduled observations during the first quarter of 2008 and 70 percent of its scheduled observations during the fourth quarter of 2008.

Under 40 CFR 50 Appendix N 4.1(c) (again with respect to annual averages), EPA may approve the use of less than complete data for purposes of comparison to the NAAQS, and "may consider factors such as \* \* \* nearby concentrations in determining whether to use such data." The following table summarizes annual average PM<sub>2.5</sub> concentrations for all monitors operating in the Chicago nonattainment area that have observed a violation of the annual standard for at least one

<sup>1</sup> In any case, the annual average concentrations at these sites averaged for 2006 to 2008 are below 15.0 µg/m<sup>3</sup>: the average at Illinois' McCook site (site number 17-031-1016) is 14.7 µg/m<sup>3</sup>, the average at Indiana's Burr Street site (site number 18-089-0026) is 14.9 µg/m<sup>3</sup>, and the average at Indiana's IITRI site (site number 18-089-0022) is 13.7 µg/m<sup>3</sup>.

three-year period since 2002. These monitors are the most similar to the Cicero monitor and provide the most

relevant information for assessing air quality at Cicero.

TABLE 2—ANNUAL AVERAGE DESIGN VALUES FOR ALL SITES IN THE CHICAGO AREA WITH VIOLATING MONITORS SINCE 2002 (IN  $\mu\text{G}/\text{M}^3$ )

Site location	Site No.	Annual average design value							
		2002–2004	2003–2005	2004–2006	2005–2007	2006	2007	2008	2006–2008
East 114th .....	170310022	15.0	15.6	14.8	15.3	13.23	15.73	12.54	13.8
103rd & Luella .....	170310050	14.9	15.2	14.5	14.7	13.33	14.14	11.80	13.1
Mayfair Pumping Stn .....	170310052	15.9	16.0	15.6	15.7	14.50	15.49	12.18	14.1
Com Ed .....	170310057	14.9	15.3	14.6	15.1	13.51	15.18	12.03	13.6
Lawndale .....	170310076	14.9	15.2	14.7	14.8	13.48	14.30	11.89	13.2
Blue Island .....	170312001	14.7	15.1	14.6	14.6	13.18	14.32	12.50	13.3
Schiller Park .....	170313103	16.0	16.8	16.1	15.9	14.84	15.35	13.59	14.6
Summit .....	170313301	15.3	15.6	15.0	15.2	13.78	14.77	12.03	13.5
Cicero .....	170316005	16.0	16.1	15.3	15.1	14.34	14.79	13.25	*(14.1)
Gary Water .....	180890031	.....	16.8	15.1	14.9	13.29	14.55	12.17	13.3

\*Data do not meet completeness requirements

EPA used multiple approaches to assess the likelihood that the Cicero site, had it collected complete data, would have shown attainment for the 2006 to 2008 period. One approach was to examine the relationship between concentrations at the Cicero site and concentrations nearby and elsewhere in the area. The Cicero site generally records values slightly below the values at the Schiller Park site; average concentrations from 2002 to 2008 are  $0.4 \mu\text{g}/\text{m}^3$  lower at the Cicero site than at the Schiller Park site. More generally, the concentrations at the various sites in the Chicago area are well correlated. EPA also examined quarterly average concentrations at the various sites; these data reinforce the point that the Cicero site is very likely to observe low concentrations when other sites in the area are observing low concentrations. This degree of correlation suggests that the degree of air quality improvement at the various other sites in the area is a good indication of the degree of air quality improvement likely to have occurred at the Cicero site. The other sites all show 2008 annual average around  $2\text{--}3 \mu\text{g}/\text{m}^3$  lower than the 2007 annual average values, which is approximately the difference between the 2007 average and the average of available 2008 data found at the Cicero site.

In summary, since the available 2008 data at the Cicero site show concentrations that are in the expected range relative to concentrations observed at other similar sites in the area, EPA has confidence that the incomplete data in 2008 at the Cicero site are representative of the concentrations that would likely have been found in a complete data set, and

that the complete data set would have shown attainment.

A second approach was to use the 2008 annual average from the Schiller Park site (a traditionally higher concentration site) in lieu of using data from the Cicero site for that year. This yielded a three-year design value of  $14.13 \mu\text{g}/\text{m}^3$ , indicating attainment. Thus, as provided for in 40 CFR 50 Appendix N 4.1(c), EPA again finds that data from other sites support the finding that the available data at the Cicero site give valid evidence that the site is attaining the standard.

A third approach was a conservative data substitution analysis. For each sampling day in 2008 for which the Cicero site failed to collect data, EPA substituted the highest concentration observed on that day at any site in the Chicago area. This analysis yielded an upper bound 2008 average concentration at Cicero of  $14.11 \mu\text{g}/\text{m}^3$ , somewhat higher than the  $13.25 \mu\text{g}/\text{m}^3$  found with incomplete data. Using this upper bound estimate for 2008, the upper bound estimate for the 2006 to 2008 average concentration at the Cicero site is  $14.4 \mu\text{g}/\text{m}^3$ . For these reasons, EPA is confident that if the Cicero site had collected complete data in 2008, it would have resulted in a design value that would have been below  $15 \mu\text{g}/\text{m}^3$ . Thus, EPA believes air quality at this site, as well as at other sites in the area, is meeting the annual air quality standard.

In accordance with Appendix N and standard EPA practice, this review is based on the three most recent years of data, *i.e.*, data from 2006 to 2008. Appendix N does not provide for examining partial years of data, because various seasons of the year reflect

various influences on  $\text{PM}_{2.5}$  concentrations, and a partial year's data may not be representative of values that would be determined from a full year's data set. Nevertheless, EPA examined data from the first half of 2009. For each site, the average of available 2009 data is at or below the average for corresponding periods in 2006 to 2008, and the 98th percentile of available 24-hour average concentrations is again more than  $30 \mu\text{g}/\text{m}^3$  below the pertinent standard. Therefore, the available data for 2009 are consistent with the finding, based on 2006 to 2008 data, that the Chicago area is attaining the 1997  $\text{PM}_{2.5}$  standards.

On the basis of this review, EPA has concluded that this area attained the 1997  $\text{PM}_{2.5}$  NAAQS based on 2006–2008 data. In addition, monitoring data for 2009 that are available to date in the EPA AQS database, but not yet certified, indicate that this area continues to attain the 1997  $\text{PM}_{2.5}$  NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### B. Evansville Area

EPA has reviewed the ambient air monitoring data for the Evansville area in accordance with the provisions of 40 CFR Part 50 Appendix N. All data considered have been recorded in EPA's AQS database. This review primarily addresses air quality data collected in the three-year period from 2006 to 2008.

The highest annual average  $\text{PM}_{2.5}$  concentration in the Evansville nonattainment area for the 2006–2008 monitoring period is  $13.7 \mu\text{g}/\text{m}^3$ , which occurs both at the Jasper Golf site (site 18–037–0005, in Dubois County) and at

the Evansville/West Mill Road site (site 18-163-0012, in Vanderburgh County). The Evansville area also has four additional monitors with data for 2006 to 2008, at which the 2006-2008 three-year average annual concentrations

range from 13.4 to 13.6 µg/m<sup>3</sup>. The average 98th percentile 24-hour concentrations range from 28 to 32 µg/m<sup>3</sup>. Thus, the Evansville area is observing concentrations well below the 1997 standards of 15.0 µg/m<sup>3</sup> and 65 µg/m<sup>3</sup>, respectively. The following table provides annual average and 98th percentile 24-hour average concentrations at all sites in the Evansville area.

m<sup>3</sup>, respectively. The following table provides annual average and 98th percentile 24-hour average concentrations at all sites in the Evansville area.

TABLE 3—ANNUAL AND 24-HOUR AVERAGE DESIGN VALUES FOR ALL SITES IN THE EVANSVILLE AREA (IN µg/m<sup>3</sup>)

Site location	Site No.	Annual average design value	24-Hour average design value
Jasper Sport .....	180370004	13.4	32
Jasper Golf .....	180370005	13.7	31
Jasper .....	180372001	13.6	30
Evansville—Civic Center .....	181630006	13.4	30
Evansville—W. Mill .....	181630012	13.7	28
U. of Evansville .....	181630016	13.6	29

Some sites in the Evansville area did not meet the completeness criterion of measuring at least 75 percent of the scheduled samples. Under 40 CFR 50 Appendix N 4.1(c), (addressing annual averages), EPA may approve the use of less than complete data for purposes of comparison to the NAAQS, and “may consider factors such as \* \* \* nearby concentrations in determining whether to use such data.” For these sites, EPA conducted a data substitution analysis, assessing whether the site would still have observed attainment under the hypothesis that the monitor on the days of missed samples might have recorded the highest concentration that the monitor observed during the applicable quarter during the 2006 to 2008 period. Both the Jasper Golf site and the Evansville/West Mill Road site had a quarter in 2006 to 2008 that measured less than 75 percent complete data, but in both cases the substitution analysis indicates that the monitors would have shown attainment even with conservative assumptions about the missing data.

A third site, known as the Jasper Sport Complex site (site 18-037-004, in DuBois County), had missing data to an extent such that the conservative data substitution approach could not be used to confirm that the site is attaining the annual standard. This site began operation in early 2006 (January 29, 2006), and so earlier (e.g. 2005 to 2007) three-year averages are not available. Thus, one option is for EPA to find that air quality at this site is indeterminate and to discard this site from its evaluation. The other option is for EPA to examine the data at this site in relation to data at other similar sites in the area, to judge the likelihood that the monitor would have shown attainment had it collected complete data. The available data at this site have always

indicated annual average concentrations below 15.0 µg/m<sup>3</sup>. The available data at this site are similar to the data are other nearby sites in the area. Therefore, EPA believes this site, like the other sites in the Evansville area, is attaining the standard. In addition, all sites with data from 2005 to 2007 are showing attainment for that period as well. Therefore, EPA is confident that all sites in the Evansville area, including sites that did not meet completeness requirements, are now meeting the 1997 NAAQS.

In accordance with Appendix N and standard EPA practice, this review of data is based on the three most recent years of complete data, generally 2006 to 2008. Appendix N does not provide for examining partial years of data, because various seasons of the year reflect various influences on PM<sub>2.5</sub> concentrations, and a partial year’s data may not be representative of values that would be determined from a full year’s data set. Nevertheless, EPA examined data from the first half of 2009. For each site, the average of available 2009 data is at or below the average for corresponding periods in 2006 to 2008, and the 98th percentile of available 24-hour average concentrations is again more than 30 µg/m<sup>3</sup> below the pertinent standard. Therefore, the available data for 2009 are consistent with the finding, based on 2006 to 2008 data, that the Evansville area is attaining the 1997 PM<sub>2.5</sub> standards.

On the basis of this review, EPA has concluded that this area has met and continues to meet the 1997 PM<sub>2.5</sub> NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

**V. What Is the Effect of These Actions?**

If these determinations are made final, under the provisions of EPA’s PM<sub>2.5</sub>

implementation rule (see 40 CFR 51.1004(c)), the requirements for the Chicago and Evansville PM<sub>2.5</sub> nonattainment areas to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 1997 PM<sub>2.5</sub> NAAQS would be suspended for so long as the area continues to attain the 1997 PM<sub>2.5</sub> NAAQS.

As further discussed below, the proposed determinations would: (1) For the Chicago and Evansville nonattainment areas, suspend the requirements to submit an attainment demonstration and associated reasonably available control measures (RACM) (including reasonably available control technologies (RACT)), a reasonable further progress plan (RFP), contingency measures, and any other planning SIPs related to attainment of the 1997 PM<sub>2.5</sub> NAAQS; (2) continue until such time, if any, that EPA subsequently determines that the area has violated the 1997 PM<sub>2.5</sub> NAAQS; (3) be separate from, and not influence or otherwise affect, any future designation determination or requirements for the Chicago and Evansville areas based on the 2006 PM<sub>2.5</sub> NAAQS; and (4) remain in effect regardless of whether EPA designates these areas as nonattainment areas for purposes of the 2006 PM<sub>2.5</sub> NAAQS. Furthermore, as described below, any such final determination would not be equivalent to the redesignation of the area to attainment based on the 1997 PM<sub>2.5</sub> NAAQS.

If these rulemakings are finalized and EPA subsequently determines, after notice-and-comment rulemaking in the Federal Register, that either or both areas have violated the 1997 PM<sub>2.5</sub> NAAQS, the basis for the suspension of the specific requirements, set forth at 40

CFR 51.1004(c), would no longer exist for the pertinent area(s), and the pertinent area(s) would thereafter have to address the pertinent requirements.

The determinations that EPA proposes with this action, that the air quality data show attainment of the 1997 PM<sub>2.5</sub> NAAQS, is not equivalent to the redesignation of the areas to attainment. These proposed actions, if finalized, would not constitute a redesignation to attainment under 107(d)(3) of the CAA, because we would not yet have approved maintenance plans for the areas as required under 175A of the CAA, nor would we have determined that the areas have met the other requirements for redesignation. The designation status of the areas would remain nonattainment for the 1997 PM<sub>2.5</sub> NAAQS until such time as EPA determines that the areas meet the CAA requirements for redesignation to attainment.

These proposed actions, if finalized, are limited to a determination that the Chicago and Evansville areas have attained the 1997 PM<sub>2.5</sub> NAAQS. The 1997 PM<sub>2.5</sub> NAAQS became effective on July 18, 1997 (62 FR 36852) and are set forth at 40 CFR 50.7. The 2006 PM<sub>2.5</sub> NAAQS, which became effective on December 18, 2006 (71 FR 61144) are set forth at 40 CFR 50.13. EPA is currently in the process of making designation determinations, as required by CAA 107(d)(1), for the 2006 PM<sub>2.5</sub> NAAQS. EPA has not made any designation determinations for the Chicago or Evansville areas based on the 2006 PM<sub>2.5</sub> NAAQS. These proposed determinations, and any final determinations, will have no effect on, and are not related to, any future designation determination that EPA may make based on the 2006 PM<sub>2.5</sub> NAAQS for the Chicago or Evansville areas. Conversely, any future designation determination of the Chicago or Evansville areas, based on the 2006 PM<sub>2.5</sub> NAAQS, will not have any effect on the determinations proposed by this action.

If these proposed determinations are made final and the Chicago and Evansville areas continue to demonstrate attainment with the 1997 PM<sub>2.5</sub> NAAQS, the requirements for the Chicago and Evansville areas to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 PM<sub>2.5</sub> NAAQS would remain suspended, regardless of whether EPA designates these areas as nonattainment areas for purposes of the 2006 PM<sub>2.5</sub> NAAQS. Once the areas are designated for the 2006 NAAQS, they will have to

meet all applicable requirements for that designation.

## VI. 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 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 proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*). Because this rule proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements, 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).

This proposed rule also does not have Tribal implications because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks” (62 FR 19885, April 23, 1997) because it proposes to determine that air quality in the affected area is meeting Federal standards.

The requirements of 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures to otherwise satisfy the provisions of the CAA. This proposed rule does not impose an information collection burden under the provisions of the Paper Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Under Executive Order 12898, EPA finds that this rule, pertaining to the determinations of attainment of the fine particle standard for the Chicago (Illinois and Indiana) and Evansville (Indiana) areas, involves proposed determinations of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 16, 2009.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E9–23087 Filed 9–23–09; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R03–OAR–2009–0370; FRL–8962–6]

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Clean Air Interstate Rule; NO<sub>x</sub> SIP Call Rule; Amendments to NO<sub>x</sub> Control Rules

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Pennsylvania State Implementation Plan (SIP). The revision addresses the requirements of EPA’s Clean Air Interstate Rule (CAIR) and modifies other requirements in Pennsylvania’s SIP that interact with CAIR including: The termination of Pennsylvania’s NO<sub>x</sub> Budget Trading Program; statewide provisions for large, stationary internal combustion engines; statewide provisions for large cement