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, Intergovernmental relations, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 17, 2008.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

40 CFR part 52 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 S—Kentucky

■ 2. Section 52.920 (d) is amended:

■ a. By revising the entry for ''TVA Paradise Permit,'' and

■ b. by adding a new entry at the end of the table for ''TVA Paradise Permit'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
.				
*	*	*	*	*
TVA Paradise Permit.	KDEPDAQ Permit 0–87–012	6/29/87	08/25/89, 54 FR 35326	WITHDRAWN
.				
*	*	*	*	*
TVA Paradise Permit.	KDEPDAQ Permit 0–87–012	10/19/07	4/29/08 [Insert citation of publication].	Emission Rates Units 1 and 2 are 1.2 lb/MMBTU and Unit 3 is 1.2 lb/MMBTU or *3.1 lb/MMBTU.

*Bypass of the scrubber shall be limited to 720 operating hours in any 12 consecutive months.

* * * * *

[FR Doc. E8–9252 Filed 4–28–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2004–WI–0002; FRL–8557–5]

Redesignation of the Forest County Potawatomi Community Reservation to a PSD Class I Area; Dispute Resolution with the State of Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of dispute resolution.

SUMMARY: The purpose of this notice is to announce the EPA resolution of an intergovernmental dispute over a request by the Forest County Potawatomi Community (FCP Community) to redesignate portions of the FCP Community reservation as a non-Federal Class I area under the Clean Air Act (CAA or Act) program for Prevention of Significant Deterioration (PSD) of air quality. On June 8, 1995, the Governors of Wisconsin and Michigan raised concerns about EPA's proposal to approve the request of the FCP Community to redesignate portions of its reservation as a non-Federal Class I area and asked EPA to enter negotiations with the parties to resolve the dispute as provided for in the CAA. The State of Michigan and the FCP Community were unable to reach an agreement concerning the redesignation. After fully considering the concerns raised by the State of Michigan, EPA has determined that it is not proper in these particular circumstances to disapprove the FCP Community's redesignation request. The Class I redesignation is described in a final rulemaking notice also published in this **Federal Register**. The Class I designation will result in lowering the allowable increases in ambient concentrations of particulate matter, sulfur dioxide, and nitrogen oxide within the reservation.

DATES: This action is effective on May 29, 2008.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507; telephone number: 312–886–0671; fax number: 312–886–5824; e-mail address: *blathras.constantine@epa.gov.*

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

I. General Information

A. Does This Action Apply to Me?

This action will apply to applicants to the PSD construction permit program on Class I trust lands of the Forest County Potawatomi Community.

B. How Can I Get Copies Of This Document and Related Information?

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2004–WI–0002. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation will be 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. The docket is also available during normal business hours for public inspection and copying at the Air Programs Branch, Region 5, EPA (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

2. *Electronic Access.* You may access this **Federal Register** document

electronically through the EPA Internet under the ''**Federal Register**'' listings at: *http://www.epa.gov/fedrgstr*. In addition to being available in the docket and on the EPA **Federal Register** Internet Web site, an electronic copy of this notice is also available on the EPA's New Source Review (NSR) Web site, under Regulations & Standards, at *http://www.epa.gov/nsr/actions.html.*

C. How is This Notice Organized?

The information in this notice is organized as follows:

II. This Notice

A. Area Proposed for Redesignation

On February 14, 1995, the FCP Community submitted a request to the EPA to approve the redesignation of the air quality status of the FCP Community's Reservation from ''Class II'' to ''Class I'' under the CAA's PSD regulations. The area of FCP Community reservation lands that has been proposed for redesignation to Class I comprises 10,818 acres, all of which is located in Forest County, Wisconsin.

B. Authority for Invoking Dispute Resolution Procedures

Section 164(e) of the CAA and 40 CFR 52.21(t) provide the current statutory and regulatory framework for resolving disputes between states and Tribes over redesignation of an area or for permits for new major emitting facilities that may cause or contribute to a cumulative change in air quality under the PSD program. Section 164(e) provides that if the Governor of an affected state or the appropriate Indian Governing Body of an affected Tribe disagrees with a request for redesignation by either party, then the governor or Indian ruling body may request that EPA negotiate with the parties to resolve the dispute. The statute provides that either party can ask the Administrator for a recommendation to resolve the dispute, and if the parties fail to reach an agreement during the negotiations, ''the Administrator shall resolve the dispute and his determination, or the results of the agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan.'' Section 164(e), 42 U.S.C. 7474(e).

Similarly, if a permit is proposed to be issued for any new major emitting facility proposed for construction in any state which the Governor of an affected state or the governing body of an affected Indian Tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed within the affected state or reservation, the Governor or Tribal ruling body may invoke the same dispute resolution mechanism. States or Tribes with Class I areas cannot, however, ''veto'' permits that may adversely affect those areas.

In resolving a dispute, the statute directs EPA to ''consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have quality related values of such area.'' As further discussed in the response to comments concerning the disputed issues, the CAA and its implementing regulations do not contain a minimum size requirement for area redesignation by a state or Tribe, and the size of the redesignated area is relevant only to the extent that it may impact effective air quality management or air quality related values (AQRVs). The Act does not define AQRVs nor identify specific AQRVs other than visibility (*See* section 165(d)(2)(B) of the Act), but in the legislative history to the Act, AQRVs are described as follows:

> The term ''air quality related values'' of Federal lands designated as Class I includes the fundamental purposes for which such lands have been established and preserved by the Congress and the responsible Federal agency. For example, under the 1916 Organic Act to establish the National Park Service (16 U.S.C. 1), the purpose of such national park lands ''is to conserve the scenery and the natural historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.''

C. Agency Action

1. Background on Redesignation Request

Pursuant to section 164(c), 42 U.S.C. 7474(c), the FCP Community Tribal Council formally submitted a proposal to redesignate certain FCP Community reservation lands from Class II to Class I to the EPA on February 24, 1995. A Class I air quality designation provides greater protection for air resources by decreasing the increases allowed in the ambient concentrations of particulate matter, sulfur dioxide, and nitrogen oxides from any new major stationary sources or major modifications to existing sources in the vicinity. The types of facilities whose emissions could impact these lower limits are generally new or expanding large industrial sources such as electric utilities and pulp and paper mills. No new operating permits or additional controls would be required for existing sources solely as a result of a Class I designation.

Along with reducing allowable concentrations of key pollutants, Class I areas may also include AQRVs which are intended to further protect air quality. In the case of the FCP Community redesignation, the Tribe has proposed acidic and mercury deposition as the AQRVs it is seeking to protect. Because state officials were concerned about AQRVs and other issues, an intergovernmental dispute eventually developed and the parties ultimately sought dispute resolution under section 164(e).

By statute, the Agency must approve or disapprove a request for redesignation. Accordingly, on June 29, 1995, EPA published a notice in the **Federal Register** (FR) proposing to approve the redesignation request by the FCP Community to Class I area status. The notice provided for a 60 day public comment period. However, on June 8, 1995, the Governors of Wisconsin and Michigan sent a joint letter to EPA objecting to EPA's proposal to grant the FCP Community request for redesignation and requesting dispute resolution. The June 8 letter focused on two concerns, first, the states' perception that EPA lacked rules to handle such redesignation requests and the implementation of non-federal Class I areas, and second, that a non-federal Class I area would ''significantly infringe upon the ability of our state governments to manage the natural resources of our states.'' [1]

To address their concerns, the Agency published a FR notice (60 FR 40139) on August 7, 1995, postponing the scheduled August 2, 1995 public hearing and extending, at the states' request, the public comment period indefinitely while the Agency attempted to negotiate with the states and respond to the issues they had raised.

As already noted, section 164(e) of the Act allows either the Governor of a state or the Indian ruling body that disagrees with a proposed redesignation to request the Administrator to enter into negotiations with the parties involved to resolve the dispute. In response to the Governors' letter, EPA contracted with a professional mediation service (RESOLVE, Inc.) to provide mediation

[1] Letter from Governor Tommy G. Thompson and Governor John Engler to Carol Browner, June 8, 1995.

services. During 1995, Wisconsin and the FCP Community began work toward developing a Memorandum of Understanding, and invited Michigan to participate in this process. RESOLVE discussed the case with EPA and the parties, and circulated resumes and a list of potential mediators for comment by the parties, but the parties could not agree on a mediator and none was selected.

In the meantime, in partial response to the states' request that EPA promulgate rules to address non-federal Class I areas, EPA had formed a senior workgroup to cooperatively develop options for consideration by the states and Tribes regarding roles and responsibilities of non-Federal Class I area managers. To gather public comment on different proposals, EPA published an advanced notice of proposed rulemaking (ANPR) on May 16, 1997. 62 FR 27158 (May 16, 1997). The EPA held public workshops in Chicago and Phoenix on the ANPR, and gathered testimony on the options for proposed rulemaking. 62 FR 33786 (June 23, 1997). The states had requested that EPA's action of the FCP Community Class I request be delayed until after the Agency could complete this rulemaking, but the rulemaking was not finalized.[2]

From 1995 through 1997, EPA engaged in an extended correspondence with Wisconsin and Michigan regarding the proposed redesignation and how to address both states' concerns, as reflected in the record for this action.

Following nearly 2 years of discussions, however, the states and the Tribe had not reached a resolution of the issues that had been raised by the states, nor had EPA completed the public notice process on the proposed redesignation. The issues included for Michigan, in addition to the two concerns discussed above, that the Agency promulgate additional rules to implement the dispute resolution provision at CAA section 164(e), that the Agency impose its own requirement that non-federal Class I areas be limited to those exceeding 5,000 acres in size with specified ''uniqueness'' criteria, and that the Agency promulgate additional rules to cover all aspects of implementing the requirements of established non-federal Class I area requirements.[3]

In the absence of an agreed resolution of either of the states' issues, on July 10, 1997, EPA moved to bring closure to the rulemaking process by publishing a notice for two informational meetings and two public hearings on the FCP Community's redesignation request with a public comment period to close on September 15, 1997. 62 FR 37007 (July 10, 1997). EPA held public hearings on the proposed redesignation on August 12, 1997, in Carter, Wisconsin, and August 13, 1997, in Rhinelander, Wisconsin. By the close of the public comment period, EPA had received more than 120 comments on the proposed redesignation.

On April 21, 1998[4], Wisconsin requested that EPA reinitiate the dispute resolution process under section 164(e). In response, EPA sent letters to the State of Wisconsin, the State of Michigan, and the FCP Community requesting a meeting to begin the negotiations to resolve the dispute. EPA requested that the parties each identify its chief negotiator, and that each party submit a written list of issues that it wished to submit to the dispute resolution process. EPA, in consultation with the parties, requested RESOLVE to select a mediator, and this time, Triangle Associates, Inc., Seattle, Washington, was chosen to mediate the discussions.

EPA requested that the mediator interview each of the parties, discuss the issues submitted by each party, and structure a dispute resolution process tailored to the needs of this dispute. Following the initial interview, the Agency requested an initial meeting of all parties to agree upon a protocol, establish a list of issues appropriate for discussion under section 164(e), and plan a series of further meetings aimed at resolving the dispute.

The first dispute resolution meeting occurred on September 2, 1998, at the Region 5 offices in Chicago, Illinois. Both the States of Wisconsin and Michigan participated in this meeting, although Michigan formally announced its participation solely as an ''observer.''[5] During this meeting, the states and the Tribe identified issues of concern and attempted to find areas of overlap that could potentially lead to resolution.

Following this first meeting, the parties requested that EPA examine the twenty-one issues submitted for dispute resolution to determine which would be appropriate for discussion and resolution under section 164(e) of the CAA. EPA Region 5, in consultation with EPA's headquarters offices (Office of Air and Radiation, Office of General Counsel, and Office of Air Quality Planning and Standards), by letter of November 6, 1998, ultimately submitted a list of six suitable topics for further discussion and resolution to the parties. These issues included: ''(1) Whether the lands proposed for redesignation are of sufficient size to allow for effective air quality management; (2) the extent to which the lands proposed for redesignation have sufficient size to have AQRVs; (3) the off-reservation impacts of redesignation as discussed in the [FCP Community's] Technical Report; (4) the Tribe's choice of mercury deposition as an AQRV; (5) the Tribe's choice of AQRVs; and (6) the roles and responsibilities of the respective parties in the dispute resolution discussion on September 2, 1998.''[6] The Agency also informed the parties that the remaining issues were either unsuitable for discussion under the CAA section 164(e), or where wholly within EPA's purview as a decision maker under CAA section 164(b) and 164(e).

On November 16, 1998, the Tribe and the State of Wisconsin held a second dispute resolution meeting in Green Bay, Wisconsin, but the State of Michigan elected not to participate in this meeting. Following several meetings, Wisconsin and the Tribe reached an agreement that resolved their dispute.

The parties circulated the final agreement for signature, and the EPA Region 5 Regional Administrator concurred on the agreement on October 12, 1999. Consistent with CAA section 164(e), the terms of the agreement constitute the resolution of the dispute between Wisconsin and the Tribe.

However, after observing the first dispute resolution session on September 2, 1998, the State of Michigan did not participate in any of the other dispute resolution sessions between the State of Wisconsin and the FCP Community. Triangle Associates, Inc. continued to keep Michigan abreast of the dispute resolution proceedings by forwarding the minutes of each negotiating session

[2] Thompson and Engler to Mary Nichols, February 6, 1977; Russell J. Harding, Director MDEQ, to EPA Air Docket, August 8, 1997. In any case, the States viewed the ANPR as inadequate because ''the rulemaking will not address all of our concerns related to Tribal Class I redesignation. The EPA must promulgate adequate rules governing *all aspects of Class I redesignation* before proceeding with a final decision on the Potawatomi or any other Tribal Class I requests (emphasis in original).''

[3] Letter from Russell J. Harding, MDEQ to Carlton Nash, Chief, Regulation Development Section, Region V EPA, September 15, 1997.

[4] Letter from Governor Tommy Thompson to Richard Wilson, Acting Assistant Administrator for Air and Radiation. April 21, 1998.

[5] Letter from [Gary R. Hughes, acting for] Russell J. Harding, Director MEDQ, to David A. Ullrich, Acting Regional Administrator, August 20, 1998.

[6] Letter from Stephen Rothblatt, Acting Director, Air and Radiation Division, Region 5, to George E. Meyer, Secretary WDNR, and Joseph Young, attorney for FCP, November 6, 1998 (cc to Denis Drake, MDEQ).

to the state. Believing that the negotiations with Michigan had reached an impasse, on August 4, 1999, the Forest County Potawatomi Vice-Chairman contacted EPA in writing to request that the Administrator resolve the dispute with the State of Michigan under section 164(e). On December 22, 1999, the MDEQ sent a letter to EPA requesting a meeting between the FCP Community and Michigan as a continuation of the dispute resolution Michigan had invoked under section 164(e), stating that while the state still considered all of the issues it had previously raised to be unresolved, ''in the interest of resolving this matter, I request that [EPA] begin a negotiation with the FCP Community and the State of Michigan, as a continuation of the dispute resolution process, and in an effort to address the comments and resolve the objections previously forwarded by the State of Michigan.'' [7]

On April 25, 2000, Michigan submitted a list of twelve issues for discussion in the new round of dispute negotiations, which corresponded to issues previously raised by the state.[8] On June 23, 2000, the FCP Community submitted a letter to EPA responding to Michigan's request for dispute negotiations. The EPA set up a meeting between Michigan, the FCP Community, and EPA on January 9, 2001, in Chicago, Illinois. The parties exchanged initial draft proposed principles for resolution of the dispute negotiation. After reviewing their respective proposed principles, the parties could not reach an agreement. On February 12, 2001, the FCP Community submitted a letter to EPA requesting an EPA determination to resolve the dispute and adopt the FCP Community proposal as the final determination. On February 23, 2001, EPA sent a letter to both parties requesting that they submit to EPA their positions on the dispute negotiation and their proposals for resolution. On March 16, 2001, Michigan submitted its position on the section 164(e) resolution to EPA, reiterating the two central concerns originally identified in the joint-states' letter of June 8, 1995: (1) Lack of formally promulgated rules, and (2) potential impact of Class I area on state's air program management. The letter concluded ''if the EPA's final action does not impose any additional obligations upon Michigan's air program and does not subject Michigan air use permits to section 164(e) dispute resolution review, the need for Michigan to request review by the U.S. Sixth Circuit Court of Appeals of the designation of FCP Community lands may be obviated.'' [9] On March 19, 2001, the FCP Community submitted its position on the section 164(e) resolution to EPA.

On February 3, 2003, the FCP Community contacted EPA to request that the Agency's actions on the rulemaking be suspended for a 90-day period to allow the Tribe to attempt a bilateral negotiation with the State of Michigan's new administration. EPA encouraged the parties to meet and offered to reinitiate the dispute resolution process with the third-party mediator should the parties request this. On February 14, 2003, MDEQ responded that it would participate in bilateral discussions, but considered these outside the scope of the CAA section 164(e) dispute resolution process.[10] These discussions failed to produce an agreement, and in November 2003, the Tribe requested that EPA move forward with the rulemaking request.[11]

Although EPA provided updates for the states and Tribe on the progress of completing the rulemaking process, there was no further resolution of the issues raised by Michigan by the time EPA published the proposed FIP in December 2006.

2. EPA's Decision Regarding the Dispute Resolution Between the FCP Community and the State of Michigan

Michigan submitted extensive comments opposing the proposed Federal Implementation Plan (FIP) and reiterating its concerns regarding the redesignation. It objected to EPA's proposal to implement the redesignation through a FIP, to the validity of the agreement between Wisconsin and the Tribe, and to approving the redesignation before completing a rulemaking proposed in August 2006. See Proposed Rule: Review of New Sources and Modifications in Indian Country, 71 FR 48696 (August 21, 2006).

However, none of these comments provide a legally supportable basis for denying the redesignation. The CAA gives EPA only a very limited role in reviewing a redesignation request. As a general rule, EPA can ''disapprove the redesignation of any area only if [it] finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements'' in CAA section 164(b) and 40 CFR 52.21. ''Once these procedural requirements are met, EPA must approve the request for redesignation.'' *Administrator, State of Arizona* v. *EPA,* 151 F.3d 1205, 1211 (9th Cir. 1998), hereafter *Arizona* v. *EPA.* EPA cannot ''re-weigh the effects of a proposed redesignation or second-guess a tribe's decision to redesignate its reservation lands.'' *Id.* at 1212.

Where a neighboring state or tribe disagrees with the proposed redesignation of an area, section 164(e) provides a narrow exception to that general rule of limited EPA review. EPA believes that where there is a dispute, it must consider whether to resolve the dispute by disapproving the redesignation, based on the factors identified in 164(e). If EPA resolves the dispute in favor of the party requesting redesignation, the dispute is terminated, and the only remaining question is whether the Tribe met the procedural requirements of 164(b)(2). Because that inquiry involves only procedural adequacy, when EPA conducts that second inquiry, it cannot consider any information relating to any matter other than procedure, even if that information was considered in the dispute resolution. Consistent with that, EPA is treating this dispute resolution separately from the approval of the redesignation request and is publishing the two separately.

In resolving a dispute over redesignation under 164(e), EPA ''must consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values.'' *Arizona* v. *EPA*, construing CAA section 164(e). EPA recognizes that this language requires EPA to consider the size of a reservation in resolving a dispute. Consistent with that, in a previous dispute, EPA rejected a state's claim that reservation lands consisting of five noncontiguous parcels totaling 632 acres, with the smallest having 3.7594 acres should be disapproved; EPA found that the areas in question ''were not too small to allow effective air quality management or to have air quality related values.'' *Arizona* v. *EPA* (citing EPA finding with approval).

In this dispute, the state has not seriously argued that the lands the Tribe has requested for redesignation were too small ''to allow effective air quality management or have air quality related

[7] Letter from Russell J. Harding, MDEQ to Stephen Rothblatt, Acting Director, Air and Radiation Division, Region 5, December 22, 1999.

[8] Letter from Russell J. Harding, MDEQ to Stephen Rothblatt, Acting Director, Air and Radiation Division, Region 5, April 25, 2000.

[9] Letter from Russell J. Harding, MDEQ to Stephen Rothblatt, Acting Director, Air and Radiation Division, Region 5, March 16, 2001.

[10] Letter from Steven E. Chester, Director MDEQ, to Al Milham, Vice Chairman, FCP Community, February 14, 2003.

[11] Letter from Al Milham, Vice Chairman, FCP Community to Steve Rothblatt, Director, Air and Radiation Division, Region 5, November 24, 2003.

values.''[12] Nevertheless, the statute directs EPA to consider that subject.

In its decision to grant the Class I redesignation request for the Yavapai-Apache reservation, EPA examined whether it would be difficult to perform a PSD air quality modeling analysis that assessed the impacts of a proposed source in such a situation. The EPA concluded that, based on the modeling tools available at that time, it would be relatively simple and practicable for a proposed source to project its impact on the Class I area parcels and evaluate the analysis. *See* 61 FR at 56457–56458. Moreover, current air quality planning and management tools have become increasingly sophisticated and refined and apply to a variety of area sizes and configurations, ranging from a single facility to large metropolitan areas. For example, EPA, in coordination with states has established nonattainment areas in states for the purpose of implementing nonattainment planning requirements for the lead National Ambient Air Quality Standards (NAAQS) that encompass areas of only a few square kilometers. *See* e.g., 40 CFR 81.310 and 40 CFR 81.311. Conversely, there is an ozone transport region under the CAA for the purpose of ozone nonattainment planning that spans from Maine to northern Virginia. *See* section 184(a) of the CAA. Thus, EPA is reluctant to establish rigid criteria regarding the geographic size, geographic orientation, or population size of a Class I area that would automatically disqualify certain Tribes (or states) from exercising the authority conferred under section 164(c) to redesignate lands within Reservations. *Arizona* v. *EPA*.

EPA believes it can evaluate the size of the lands in the proposed redesignation area based upon the Agency's experience in the Yavapai-Apache redesignation and other air quality planning requirements. EPA also notes that it is expected to use caution in reversing redesignation requests in resolving disputes. 61 FR at 56454–56455, (citing CAA Legislative History, vol 3 at 326).

The lands in this parcel are similar to the lands in Yavapai in containing noncontiguous parcels of various sizes. However, the lands here are many times larger, with a total acreage in excess of 10,000 acres, compared with the 632 acres in Yavapai, and with the smallest parcel being 80 acres, more than twenty times larger than the 3.7594 acre parcel in Yavapai. EPA recognizes the limits of fact matching, and does not believe that comparing acreage is necessarily dispositive in all cases. Nevertheless, it believes that based on both the result and the rationale in *Arizona* v. *EPA,* it has no basis for disapproving the redesignation based on size. EPA concludes that the size of the lands is not too small to allow effective air quality management or have AQRVs.

EPA must also consider whether it can consider any other factors, and, if so, how to do so. While 164(e) directs EPA to consider size in resolving a dispute, it does not mention other factors to consider, or discuss what discretion EPA may have with regard to considering other factors at all.

EPA believes that the mandatory language directing EPA to consider whether the proposed redesignation lands ''are of sufficient size to allow air effective air quality management or have air quality related values'' clearly establishes size as the preeminent factor in resolving disputes. EPA also believes that the references to ''effective air quality management'' and ''air quality related values'' indicates that those factors, too, may be relevant in some circumstances, to the appropriate resolution of a dispute. Thus, for example, where EPA concludes that some other factor besides size precludes effective air quality management, it may have some limited authority to resolve a dispute by disapproving a redesignation because effective air quality management is impossible.

EPA construes the reference to AQRVs in conjunction with a second use of the term in 164(e), providing that, if the parties so request, ''EPA shall make a recommendation to resolve the dispute *and* protect the air quality related values of the land involved.'' 164(e) (emphasis added). Thus, EPA believes that it has limited discretion to consider protection of AQRVs in resolving a dispute, and that in some circumstances, it may resolve a dispute by denying a redesignation where approving the redesignation would not be consistent with protecting AQRVs.

In sum, EPA has carefully considered the record in this case, and concludes it is not appropriate to deny the redesignation based on the size of the proposed area. EPA also concludes that the record does not show that the redesignation would preclude effective air quality management or be inconsistent with protecting AQRVs. EPA, therefore, resolves the dispute by rejecting the state's suggestion to deny the redesignation. EPA's approval decision is discussed in a separate notice.

EPA also notes that it does not agree with the State of Michigan comment that additional rulemaking should be proposed before EPA can resolve the dispute or approve the redesignation. The statutes that govern this decision, sections 164(b)(2) and 164(e) contain no limitations on EPA's redesignation authority of the type Michigan suggests.

[12] The State's arguments regarding size have centered on the State's complaints that EPA has not unilaterally adopted regulations that impose minimum acreage requirements of 5,000 acres on non-federal class I areas. See for example, Russell Harding to Carlton Nash, September 15, 1997, at 4; Letter from Russell Harding to Stephen Rothblatt, April 25, 2000.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Volatile organic compounds.

Dated: April 18, 2008.

Stephen L. Johnson,

Administrator.

[FR Doc. E8–8969 Filed 4–28–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2004–WI–0002; FRL–8557–4]

Redesignation of the Forest County Potawatomi Community Reservation to a PSD Class I Area; Dispute Resolution With the State of Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of dispute resolution.

SUMMARY: The purpose of this notice is to announce the resolution of an intergovernmental dispute over a request by the Forest County Potawatomi Community (FCP Community) to redesignate portions of the FCP Community reservation as a non-Federal Class I area under the Clean Air Act (CAA or Act) program for prevention of significant deterioration of air quality. On June 8, 1995, the Governors of Wisconsin and Michigan raised concerns about EPA's proposal to approve the request of the FCP Community to redesignate portions of its reservation as a non-Federal Class I area and asked EPA to initiate the intergovernmental dispute resolution process provided for in the CAA. The State of Wisconsin and the FCP Community were able to reach an agreement concerning the redesignation. After considering the final agreement signed by the FCP Community and the State of Wisconsin, EPA finds that this