

promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act.

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*)

Under Executive Order 12898, EPA finds that this rule involves a proposed determination 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, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 11, 2009.

**Laura Yoshii,**

*Acting Regional Administrator, Region 9.*

[FR Doc. E9-22933 Filed 9-22-09; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2009-0638; FRL-8960-9]

#### Determinations of Attainment of the One-Hour and Eight-Hour Ozone Standards for Various Ozone Nonattainment Areas in New Jersey and Upstate New York

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to determine that various ozone nonattainment areas in New York and New Jersey have attained the one-hour and eight-hour National Ambient Air Quality Standards for ozone. For the one-hour standard, the areas are: the Atlantic City and Warren County areas in New Jersey and the Albany-Schenectady-Troy, Buffalo-Niagara Falls, Essex County, Jefferson County, and Poughkeepsie areas in New York. For the eight-hour standard, the areas are: Buffalo-Niagara Falls, Jamestown, Poughkeepsie and Essex County (Whiteface Mountain). The States requested these determinations, based upon three years of complete, quality-

assured ambient air monitoring data and these areas have continued to attain these ozone standards based on examination of the most recent air quality data from 2006–2008. These data demonstrate that the one-hour and eight-hour ozone standards have been attained in these areas. If EPA makes these proposed determinations final for the one-hour standard, the areas subject to the one-hour standard will have completed their progress toward achieving the one-hour health standard. In the cases where EPA determines that areas have attained the eight-hour standard, the requirements for the state to submit certain reasonable further progress plans, attainment demonstrations, contingency measures and any other planning requirements of the Clean Air Act related to attainment of the ozone standards shall be suspended for as long as the areas continue to attain the eight-hour ozone standard. These proposed determinations of attainment are not redesignations of these areas to attainment. Redesignations must meet additional requirements, including an approved plan to maintain compliance with the air quality standard for ten years after redesignation.

**DATES:** Comments must be received on or before October 23, 2009. Public comments on this action are requested and will be considered before taking final action.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R02-OAR-2008-0638, by one of the following methods:

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

- *E-mail:* [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov).

- *Fax:* 212-637-3901.

- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R02-OAR-2009-0638. 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://](http://www.regulations.gov)

[www.regulations.gov](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 information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

#### FOR FURTHER INFORMATION CONTACT:

Robert F. Kelly, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. What Are Today's Proposed Actions?
- II. What Is the Background for These Actions?
  - A. When Were These Areas Designated?
  - B. How Does EPA Compute Whether an Area Complies With the One-hour Ozone Standard?
  - C. How Does EPA Compute Whether an Area Complies With the Eight-hour Ozone Standard?
  - D. Why Is EPA Determining if These Areas Are Attaining The Ozone Standards?
  - E. What Are the Likely Effects of These Determinations of Attainment?
  - F. How Are These Determinations of Attainment Different From a Redesignation to Attainment?
- III. Did These Areas Attain Their Respective Ozone Standards?
- IV. What is EPA Proposing?
- V. Statutory and Executive Order Reviews

## I. What Are Today's Proposed Actions?

The EPA is proposing to determine that several areas designated as nonattainment for ozone have attained the standard. EPA proposes that the Atlantic City area and Warren County in New Jersey and the Albany-Schenectady-Troy, Buffalo-Niagara Falls, Essex County, Jefferson County, and Poughkeepsie areas in New York be certified as attaining the one-hour ozone national ambient air quality standard (NAAQS).

EPA also proposes that four ozone nonattainment areas in New York, namely the Buffalo-Niagara Falls, Jamestown, Poughkeepsie and the Essex County nonattainment areas, be certified as attaining the eight-hour NAAQS established in 1997 for ozone.

All of these determinations are based upon three years of complete, quality-assured ambient air monitoring data for the years 2006–2008. In order to determine the area's air quality status, EPA reviewed ozone air quality data from the states, in accordance with 40 CFR 50.9<sup>1</sup> and EPA policy guidance, as well as data processing, data rounding and data completeness requirements as discussed later in this proposal. These data demonstrate that the ozone NAAQS have been attained in these areas.

Pursuant to 40 CFR 51.918, if these proposed determinations are made final for the eight-hour ozone standard, the requirements for the state to submit attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures and any other State Implementation Plans (SIPs) related to attainment of the eight-hour ozone NAAQS, will be suspended for so long as the area continues to attain the ozone NAAQS. However, other Clean Air Act requirements unrelated to the planning for attainment of the standard may still be required in some of these areas, such as development of emission inventory data and application of Reasonably Available Control Technology to certain sources of air pollution.

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

### A. When Were These Areas Designated?

The one-hour ozone designations in this proposed action were established by EPA following the enactment of the Clean Air Act (CAA) Amendments in 1990. Each area of the country that was designated nonattainment for the one-hour ozone NAAQS was classified by

operation of law as marginal, moderate, serious, severe, or extreme depending on the severity of the area's air quality problem. (See CAA sections 107(d)(1)(C) and 181(a)).

EPA designated and classified most areas of the country under the eight-hour ozone NAAQS in an April 30, 2004 final rule (69 FR 23858). On April 30, 2004, EPA also issued a final rule (69 FR 23951) entitled "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1", referred to as the Phase 1 Rule.

Among other matters, this rule revoked the one-hour ozone NAAQS in most other areas of the country, effective June 15, 2005. (See, 40 CFR 50.9(b); 69 FR at 23996; and 70 FR 44470, August 3, 2005.) The Phase 1 Rule also set forth how anti-backsliding principles will ensure continued progress toward attainment of the eight-hour ozone NAAQS by identifying which one-hour requirements remain applicable in an area after revocation of the one-hour ozone NAAQS. On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit (the Court) vacated the Phase 1 Rule. *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (DC Cir. 2006). Subsequently, in *South Coast Air Quality Management Dist. v. EPA*, 489 F.3d 1295 (DC Cir. 2007), in response to several petitions for rehearing, the Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. The court upheld the portions of the Phase 1 Rule relating to EPA's classification system under subpart 2. The portions of the rule that were vacated do not affect this proposed action.

### B. How Does EPA Compute Whether an Area Complies With the One-hour Ozone Standard?

Although the one-hour ozone NAAQS as promulgated in 40 CFR 50.9 includes no discussion of specific data handling conventions, EPA's publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the one-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard, which is 0.12 ppm. 40 CFR 50.9(a) states that: "The level of the national one-hour primary and secondary ambient air quality standards for ozone \* \* \* is 0.12 parts per million. \* \* \* The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations of 0.12 parts per million \* \* \* is equal to or

less than 1, as determined by appendix H to this part." Thus, compliance with the NAAQS is based on comparison of air quality concentrations with the standard and on how many days that standard has been exceeded, adjusted for the number of missing days.

For comparison with the NAAQS, EPA has clearly communicated the data handling conventions for the one-hour ozone NAAQS in guidance documents. As early as 1979, EPA issued guidance stating that the level of our NAAQS dictates the number of significant figures to be used in determining whether the standard was exceeded. The stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up), and, therefore, 0.125 ppm is the smallest concentration value in excess of the level of the standard. (See, "Guideline for the Interpretation of Ozone Air Quality Standards," EPA-450/4-79-003, OAQPS No. 1.2-108, January 1979.) EPA has consistently applied the rounding convention in this 1979 guideline. See, 68 FR 19111 April 17, 2003, 68 FR 62043 October 31, 2003, and 69 FR 21719 April 22, 2004. Then, EPA determines attainment status under the one-hour ozone NAAQS on the basis of the annual average number of expected exceedances of the NAAQS over a three-year period. (See, 60 FR 3349 January 17, 1995 and see, also, "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," at 57 FR 13506 April 16, 1992 ("General Preamble").) EPA's determination is based upon data that have been collected and quality-assured in accordance with 40 CFR 58, and recorded in EPA's Air Quality System (AQS) database, (formerly known as the Aerometric Information Retrieval System (AIRS)). To account for missing data, the procedures found in appendix H to 40 CFR 50 are used to adjust the actual number of monitored exceedances of the standard to yield the annual number of expected exceedances ("expected exceedance days") at an air quality monitoring site. Under EPA's policies, we determine if an area has attained the one-hour ozone NAAQS by calculating, at each monitor, the average expected number of days over the standard per year (*i.e.*, "average number of expected exceedance days") during the applicable 3-year period. See, generally, the General Preamble, 57 FR 13498, April 16, 1992 and

<sup>1</sup> CFR refers to the Code of Federal Regulations, in this case Title 40, part 50.9.

Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; "Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas," February 3, 1994. While the latter is explicitly applicable only to marginal areas, the general procedures for evaluating attainment in terms of the average number of expected exceedance days during the applicable 3-year period in this memorandum apply regardless of the initial classification of an area because all findings of attainment are made pursuant to the same CAA requirements in section 181(b)(2).

### *C. How Does EPA Compute Whether an Area Complies With the Eight-hour Ozone Standard?*

As noted later in Table 2, an area achieves attainment of the eight-hour ozone standard when an area's monitoring sites all have a design value of less than 0.085 ppm, calculated as described in 40 CFR 50, Appendix I.

The design value is the average of each year's fourth highest concentration, over a three year period, as described in Appendix I to 40 CFR 50. From 40 CFR 50, Appendix I, Section 2.2:

The standard-related summary statistic is the annual fourth-highest daily maximum 8-hour average ozone concentration, expressed in parts per million, averaged over three years. The 3-year average shall be computed using the three most recent, consecutive calendar years of monitoring data meeting the data completeness requirements described in this appendix. The computed 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations shall be expressed to three decimal places (the remaining digits to the right are truncated.)

As shown in Table 2, all of the sites have complete data and a design value less than 0.085 ppm. All of the sites have met the requirements of Appendix I of 40 CFR 50, which stipulates that in order to be used for showing attainment of the standard, the three years of data must have an average percent of days with valid ambient monitoring data of greater than 90%, and no single year with less than 75% data completeness.

This proposed action does not deal with the ozone standard that EPA established in 2008. A new set of requirements will be needed after areas are designated as not attaining this new standard. Therefore, today's proposed action, which affects requirements developed for the 1997 ozone standard, is not affected by the 2008 ozone standard, nor does it presume what air quality designations will be for the 2008 ozone standard or what measures an area may need to attain that standard.

### *D. Why Is EPA Determining If These Areas Are Attaining the Ozone Standards?*

States have requested that EPA determine that certain areas have met the applicable ozone standard. Also, in the course of periodic reviews of air quality data, EPA has noted that several ozone nonattainment areas in New Jersey and New York are now attaining the one-hour and eight-hour standard. For the one-hour standard these areas and their constituent counties are: in New Jersey, Warren County of the Allentown-Bethlehem-Easton nonattainment area and Atlantic and Cape May Counties in the Atlantic City nonattainment area; in New York, Erie and Niagara Counties in the Buffalo-Niagara Falls area, Chautauqua County in the Jamestown nonattainment area, Dutchess and Orange Counties and the portion of Orange County<sup>2</sup> in the Poughkeepsie nonattainment area; and the portion of Essex County above 4500 feet<sup>3</sup> in the Whiteface Mountain area. Air quality data from the last three years from these areas is listed later in Table 1.

The Poughkeepsie one-hour nonattainment area was initially determined to attain the one-hour standard (59 FR 18967) but later violated the standard and was reclassified as nonattainment (59 FR 38000). New York State did not request that EPA make a determination regarding the Poughkeepsie one-hour ozone nonattainment area. However, EPA has sufficient air quality data that the Poughkeepsie nonattainment area has attained the one-hour standard and is proposing to determine that the area is in attainment of the one-hour ozone standard.

For the eight-hour ozone nonattainment areas, on March 19, 2007 the New York State Department of Environmental Conservation (New York) requested EPA to find that air monitoring data from 2004 to 2006 were showing attainment of the eight-hour ozone standard in various areas of upstate New York. These areas were the Albany-Schenectady-Troy, Jefferson County, Essex County and Rochester

<sup>2</sup> For the one-hour standard, the other portion of Orange County is in the New York City nonattainment area. The portions of Orange County in each nonattainment area are listed in 40 CFR 81.333.

<sup>3</sup> Note that at the time EPA designated one-hour ozone attainment areas for the 0.12 ppm standard, air monitoring data at the summit of Whiteface Mountain violated the air quality standard but an air quality monitor at the base of the mountain recorded attainment of the standard. Therefore, only the portion of Essex County above 4500 feet in the Whiteface Mountain area was designated as nonattainment. (See 40 CFR 81.333.)

nonattainment areas. On June 14, 2007, New York updated its submittal to document its public review process, including notice and comment for the aforementioned areas. EPA determined that the Albany-Schenectady-Troy, Jefferson County, and Rochester nonattainment areas attained the eight-hour ozone standard on March 25, 2008. (See 73 FR 15672.) At that time, EPA deferred action on the Essex County area (the area around Whiteface Mountain over 1900 feet<sup>4</sup>) since the air quality data at that time were incomplete. EPA has reviewed additional air quality data since New York's original request and these areas are still recording attainment of the eight-hour ozone standard and the area in Essex County now has sufficient data to show it is attaining the standard, as shown later in Table 1. Recently, on July 30, 2009, New York submitted an updated petition requesting that EPA find that the Poughkeepsie, Buffalo-Niagara Falls and Jamestown areas have attained the eight-hour ozone standard. The request included certified air quality data through the 2008 ozone season.

New Jersey, in its *State Implementation Plan (SIP) Revision for the Attainment and Maintenance of the Ozone National Ambient Air Quality Standard*, submitted to EPA on October 29, 2007, requested that EPA find that the Atlantic City one-hour nonattainment area and Warren County (part of the Allentown-Bethlehem-Easton area) were attaining the one-hour standard.

### *E. What Are the Likely Effects of These Determinations of Attainment?*

EPA's ozone implementation rule at 40 CFR 51.900–918, promulgated under sections 172 and 182 of the Clean Air Act, describes the Clean Air Act requirements for areas designated as not attaining the 1997 eight-hour ozone standard. For areas where air quality is attaining the standard, section 51.918 of the implementation rule provides that, upon a determination of attainment by EPA, the requirements for a state to submit certain required planning SIPs related to attainment of the eight-hour NAAQS, such as attainment demonstrations, reasonable further progress plans and contingency

<sup>4</sup> Note that at the time EPA designated these areas, two air monitoring monitors on Whiteface Mountain violated the air quality standard but other air quality monitors nearest to Whiteface Mountain, but sited at lower elevations than the monitors on Whiteface Mountain, did not violate the standard, so only the portion of Essex County above 1900 feet in the Whiteface Mountain area was designated as nonattainment. (See 40 CFR 81.333.)

measures, shall be suspended. EPA's action only suspends the requirements to submit the SIP revisions discussed above. If this rulemaking is finalized and EPA subsequently determines after notice and comment rulemaking in the **Federal Register** that any of these areas have violated the standard, the basis for the suspension of these requirements for that area would no longer exist, and the area would thereafter have to address the pertinent requirements within a reasonable period of time. EPA would establish that period taking into account the individual circumstances surrounding the particular submissions at issue.

*F. How Are These Determinations of Attainment Different From a Redesignation to Attainment?*

The determinations that EPA proposes with this **Federal Register** notice, that air quality data show attainment of the ozone standard, are not equivalent to the redesignation of the areas to attainment. Using monitoring data to show attainment of the ozone NAAQS is only one of the

criteria set forth in CAA section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated, the state must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of section 107(d)(3)(E), including a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and a fully-approved SIP meeting all of the applicable requirements under section 110 and Part D and a fully-approved maintenance plan.

**III. Did These Areas Attain Their Respective Ozone Standards?**

In New York's original request, it certified the air quality data submitted by the state for the years 2004, 2005 and 2006 was accurate and properly quality-assured and met state and EPA monitoring requirements. New York submitted these data to EPA's Air Quality System, where it is available to the public via <http://www.epa.gov/ttn/airs/airsaqs/>. After New York submitted its petition, New York supplied

additional certified, quality-assured air quality data from 2007 and 2008 to EPA's Air Quality System database. EPA has reviewed these data to determine if the areas proposed by New York are in attainment when the additional data from 2007 and 2008 are included. Tables 1 and 2 summarize the ozone air quality data for areas in New York and include EPA's evaluation of whether these areas meet EPA's requirements for attaining the one- and eight-hour ozone NAAQS.

New Jersey's air quality data from 2006 through 2008 show that certain parts of the state are attaining the one-hour standard. These data have been certified by the State of New Jersey as being accurate and meeting EPA's requirements for quality. They are summarized in Table 1, along with EPA's evaluation of whether these areas meet EPA's requirements for attaining the one-hour ozone NAAQS. All of these data are also available to the public via <http://www.epa.gov/ttn/airs/airsaqs/>.

TABLE 1—FOURTH HIGHEST CONCENTRATIONS AND DESIGN VALUES FOR THE ONE-HOUR OZONE STANDARD

								Exceedences (Days over 0.124 ppm)		
EPA AQS ID	Site	Year	Valid/ total days**	Four highest daily peak one-hour ozone (ppm)				Actual	Adjusted for miss- ing data	3-year aver- age***
Allentown-Bethlehem-Easton, PA-NJ Area (includes Warren County, NJ)										
42-077-0004 .....	Allentown, PA ...	2006	214/214	.115	.100	.098	.094	0	0.0	0.0
		2007	213/214	.104	.102	.090	.090	0	0.0	Attainment.
		2008	214/214	.100	.098	.091	.088	0	0.0	
42-095-0025 .....	Freemansburg, PA.	2006	209/214	.111	.100	.094	.091	0	0.0	0.0
		2007	214/214	.105	.105	.093	.091	0	0.0	Attainment.
		2008	214/214	.107	.095	.088	.086	0	0.0	
42-095-8000 .....	Wilson, PA .....	2006	211/214	.118	.095	.093	.093	0	0.0	0.0
		2007	209/214	.105	.095	.094	.088	0	0.0	Attainment.
		2008	209/214	.106	.093	.085	.084	0	0.0	
Atlantic City, NJ										
34-001-0005 .....	Brigantine, NJ *	2006	211/214	.107	.103	.102	.096	0	0.0	0.0 Attainment.
		2007	199/214	.086	.085	.084	.083	0	0.0	
		2007	203/214	.109	.094	.089	.086	0	0.0	
		2008	203/214	.083	.081	.078	.078	0	0.0	
Albany-Schenectady-Troy, NY Area										
36-001-0012 .....	Albany, NY .....	2006	211/214	.086	.081	.078	.077	0	0.0	0.0 Attainment.
		2007	212/214	.114	.111	.091	.089	0	0.0	
		2008	198/214	.107	.096	.089	.082	0	0.0	
36-083-0004 .....	Rensselaer, NY	2006	208/214	.085	.082	.080	.079	0	0.0	0.0 Attainment.
		2007	201/214	.099	.088	.087	.086	0	0.0	
		2008	210/214	.097	.096	.090	.083	0	0.0	
36-091-0004 .....	Saratoga, NY ....	2006	212/214	.099	.086	.083	.082	0	0.0	0.0 Attainment.
		2007	202/214	.113	.096	.095	.090	0	0.0	
		2008	212/214	.100	.095	.093	.088	0	0.0	
36-093-0003 .....	Schenectady, NY.	2006	214/214	.079	.076	.074	.074	0	0.0	0.0 Attainment.
		2007	208/214	.100	.097	.081	.077	0	0.0	
		2008	211/214	.096	.092	.078	.078	0	0.0	

TABLE 1—FOURTH HIGHEST CONCENTRATIONS AND DESIGN VALUES FOR THE ONE-HOUR OZONE STANDARD—Continued

EPA AQS ID										
Buffalo-Niagara Falls, NY Area										
36-029-0002 .....	Amherst, NY .....	2006	210/214	.093	.092	.090	.090	0	0.0	0.0
		2007	212/214	.100	.098	.095	.094	0	0.0	Attainment.
		2008	210/214	.088	.087	.082	.080	0	0.0	
36-063-1006 .....	Middleport, NY ..	2006	183/214	.092	.088	.085	.081	0	0.0	0.0
		2007	214/214	.100	.097	.092	.090	0	0.0	Attainment.
		2008	212/214	.084	.081	.080	.079	0	0.0	
Essex Co, NY Area										
36-031-0002 .....	Summit Whiteface Mtn., NY.	2006	196/214	.081	.081	.080	.076	0	0.0	0.0
		2007	197/214	.115	.107	.102	.094	0	0.0	Attainment.
		2008	203/214	.097	.085	.081	.080	0	0.0	
36-031-0003 .....	Base, Whiteface Mtn., NY.	2006	211/214	.094	.083	.080	.077	0	0.0	0.0
		2007	212/214	.103	.092	.091	.086	0	0.0	Attainment.
		2008	212/214	.087	.083	.077	.074	0	0.0	
Jefferson Co, NY Area										
36-045-0002 .....	Perch River, NY	2006	213/214	.104	.094	.092	.091	0	0.0	0.0
		2007	213/214	.081	.080	.079	.078	0	0.0	Attainment.
		2008	213/214	.094	.091	.091	.090	0	0.0	
Poughkeepsie, NY Area										
36-027-0007 .....	Millbrook, NY ....	2006	205/214	.085	.076	.074	.071	0	0.0	0.0
		2007	214/214	.114	.106	.096	.090	0	0.0	Attainment.
		2008	210/214	.109	.099	.097	.091	0	0.0	
36-071-5001 .....	Valley Central, NY.	2006	214/214	.099	.093	.093	.088	0	0.0	1.0
		2007	211/214	.145	.130	.116	.093	2	2.0	Attainment.
		2008	213/214	.129	.102	.098	.087	1	1.0	
36-079-0005 .....	Mt. Ninham, NY	2006	199/214	.102	.096	.091	.087	0	0.0	0.33
		2007	209/214	.125	.110	.107	.107	1	1.0	Attainment.
		2008	207/214	.099	.097	.092	.090	0	0.0	

\* A new site was established nearby the old site. Both sites collected data in 2007 for comparison.

\*\* Each of the sites listed above recorded 75% or more of the required data each year and therefore met EPA's data completeness standards.

\*\*\* Attainment occurs when the number of days over 0.124 ppm, averaged over three years, is less than 1.1 days per year.

**Note:** Ozone concentration data are in parts per million (ppm).

TABLE 2—FOURTH HIGHEST CONCENTRATIONS AND DESIGN VALUES FOR THE EIGHT-HOUR OZONE STANDARD

EPA AQS ID	Site	% Data Collection 2006, 7, 8 (Avg.)	Ozone Concentration data in parts per million (ppm)				Attainment? (design value <85 ppb)
			Fourth highest 2006	Fourth highest 2007	Fourth highest 2008	3-year aver- age (design value)*	
Jamestown, NY Area							
36-013-0006 .....	Dunkirk, NY .....	96, 99, 99 ..... (98) .....	.083	.086	.084	.084	Attaining.
36-013-0011 .....	Westfield , NY .....	97, 97, 97 ..... (97) .....	.075	.083	.072	.076	Attaining.
Buffalo-Niagara Falls, NY Area							
36-029-0002 .....	Amherst .....	98, 99, 98 ..... (98) .....	.083	.085	.076	.081	Attaining.
36-063-1006 .....	Middleport .....	85, 100, 100 ..... (95) .....	.074	.082	.074	.076	Attaining.
Essex Co (Whiteface Mtn), NY Area							
36-031-0002 .....	Summit Whiteface Mtn.	88, 91, 94 ..... (91) .....	.071	.084	.084	.079	Attaining.

TABLE 2—FOURTH HIGHEST CONCENTRATIONS AND DESIGN VALUES FOR THE EIGHT-HOUR OZONE STANDARD—Continued

EPA AQS ID	Site	% Data Collection 2006, 7, 8 (Avg.)	Ozone Concentration data in parts per million (ppm)				Attainment? (design value <85 ppb)
			Fourth highest 2006	Fourth highest 2007	Fourth highest 2008	3-year average (design value)*	
36-031-0003 .....	Base, Whiteface Mtn.	98, 98, 98 ..... (98) .....	.071	.076	.073	.073	Attaining.
<b>Poughkeepsie, NY Area</b>							
36-027-0007 .....	Millbrook .....	93, 100, 100 ..... (97) .....	.064	.078	.081	.075	Attaining.
36-071-5001 .....	Valley Central .....	100, 99, 99 ..... (99) .....	.077	.083	.080	.080	Attaining.
36-079-0005 .....	Mt. Ninham .....	92, 97, 97 ..... (95) .....	.073	.085	.079	.079	Attaining.

\* A design value of 0.08 ppm is the goal for attainment of the eight-hour ozone standard promulgated in 1997. Therefore, any design value less than 0.085 ppm shows attainment of the standard.

As noted in Table 2, an area achieves attainment of the eight-hour ozone standard when an area's monitoring sites all have a design value of less than 0.085 ppm, calculated as described in 40 CFR 50, Appendix I. In this case, all of the sites have a design value less than 0.085 ppm in 2008, which includes the most recent year of air quality data. As noted in a previous **Federal Register** [February 14, 2008 at 73 FR 8637], the monitor at the summit of Whiteface Mountain recorded 64 and 74 percent of the required data in 2004 and 2005, respectively, which was not sufficient to meet EPA's data completeness standards. Air quality data from each of the years 2006, 2007 and 2008 meet EPA's quality requirements and data completeness requirements and allow EPA to determine this area is in attainment.

Based on our review of the air quality data certified by the states, attainment of the eight-hour ozone standard has been reached in all of these areas in New York, and in all of the one-hour nonattainment areas in New York, except for the New York City nonattainment area. The areas in New Jersey outside the New York nonattainment areas have met the one-hour standard.

#### IV. What Is EPA Proposing?

EPA's review of air quality data from 2006 to 2008 shows that ozone nonattainment areas of Buffalo-Niagara Falls, Jamestown, Essex County (Whiteface Mountain), and Poughkeepsie in New York and, in New Jersey, the Atlantic City and the Warren County portion of the Allentown-Bethlehem-Easton areas attained the one-hour standard. Also, the Jamestown, Buffalo-Niagara Falls, Essex County and

Poughkeepsie areas in New York have attained the 1997 eight-hour ozone standard.

EPA's determinations are based on the most recent three years of complete, quality-assured monitoring data at all ozone monitoring sites in each of the areas. Specifically, data through the 2008 ozone season demonstrates that these areas attain the standard. As provided in 40 CFR 51.918, if EPA's determinations that these areas have attained the eight-hour ozone standard are made final, they would suspend the requirements under section 182(b)(1) for submission of the reasonable further progress plan and ozone attainment demonstration, the requirements of section 172(c)(9) concerning submission of contingency measures and any other planning SIP relating to attainment of the eight-hour NAAQS. This suspension of requirements would be effective as long as the areas continue to attain the 1997 eight-hour ozone standard.

EPA emphasizes that its proposed determinations are contingent upon the continued monitoring and continued attainment and maintenance of the eight-hour ozone NAAQS in these affected areas. If these determinations are finalized and EPA subsequently determines, after notice and comment rulemaking, that an area violated the standard, the basis for the suspension of the planning requirements would no longer exist, and the area would thereafter have to address the pertinent requirements.

EPA is soliciting public comments on the issues discussed in this notice. EPA will consider these comments before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to EPA as discussed

in the **ADDRESSES** section of this **Federal Register**.

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action 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 Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety 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 section 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 that otherwise satisfy the provisions of the Clean Air Act.

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Under Executive Order 12898, EPA finds that this rule involves a proposed

determination 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, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 15, 2009.

**George Pavlou,**

*Acting Regional Administrator, Region 2.*

[FR Doc. E9-22932 Filed 9-22-09; 8:45 am]

**BILLING CODE 6560-50-P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[EPA-HQ-SFUND-2009-0579, EPA-HQ-SFUND-2009-0580, EPA-HQ-SFUND-2009-0581, EPA-HQ-SFUND-2009-0582, EPA-HQ-SFUND-2009-0583, EPA-HQ-SFUND-2009-0586, EPA-HQ-SFUND-2009-0587, EPA-HQ-SFUND-2009-0590, EPA-HQ-SFUND-2009-0591; FRL-8961-5]

**RIN 2050-AD75**

#### National Priorities List, Proposed Rule No. 51

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "the Act"), as amended, 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 intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add nine sites to the General Superfund Section of the NPL.

**DATES:** Comments regarding any of these proposed listings must be submitted (postmarked) on or before November 23, 2009.

**ADDRESSES:** Identify the appropriate Docket Number from the table below.

#### DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
Salt Chuck Mine .....	Outer Ketchikan County, AK .....	EPA-HQ-SFUND-2009-0579
Millsboro TCE .....	Millsboro, DE .....	EPA-HQ-SFUND-2009-0580
JJ Seifert Machine .....	Ruskin, FL .....	EPA-HQ-SFUND-2009-0581
Kerr-McGee Chemical Corp—Jacksonville .....	Jacksonville, FL .....	EPA-HQ-SFUND-2009-0582
Chemetco .....	Madison County, IL .....	EPA-HQ-SFUND-2009-0583
Gratiot County Golf Course .....	St. Louis, MI .....	EPA-HQ-SFUND-2009-0586
Kerr-McGee Chemical Corp—Navassa .....	Navassa, NC .....	EPA-HQ-SFUND-2009-0587
Black Butte Mine .....	Cottage Grove, OR .....	EPA-HQ-SFUND-2009-0590
Van der Horst USA Corporation .....	Terrell, TX .....	EPA-HQ-SFUND-2009-0591

Submit your comments, identified by the appropriate Docket number, by one of the following methods:

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

- *E-mail*: [superfund.docket@epa.gov](mailto:superfund.docket@epa.gov)
- *Mail*: Mail comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5305T); 1200

Pennsylvania Avenue, NW.; Washington, DC 20460.

- *Hand Delivery or Express Mail*: Send comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue, NW., EPA West, Room 3334, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m.,

Monday through Friday excluding Federal holidays).

**Instructions:** Direct your comments to the appropriate Docket number (see table above). 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