

is protected from the west and central part of the Lansing area, the prevailing wind source is from the west, and it is also located north of any industrial ozone that could be generated by several automotive plants.

EPA Response

As part of the State of Michigan's ozone monitoring networks, both the Rose Lake monitoring site and the 220 North Pennsylvania monitoring site have met the criteria established in the Code of Federal Regulations (CFR) for probe siting, as well as other EPA guidance at the time they were established. A follow-up review conducted on March 2, 1995 indicates they are still in compliance. These requirements can be found in 40 CFR part 58 Appendix E.

A review of wind speed and direction data for the summer months indicates that the Rose Lake monitor is within the area likely to be downwind of East Lansing. Furthermore, additional monitors in Genesee County are located in the area likely to see the maximum impact from the formation of ozone from emissions in the East Lansing area. In other words, the NO_x emissions from sources located in the East Lansing area will probably not generate ozone until they have reached the Genesee County area where there is an acceptable monitoring network.

Private Citizen Comment 2

Provisions of the Act and the provisions of the Intermodal Surface Transportation Efficiency Act (ISTEA) should be jointly examined by EPA and the Federal Highway Administration (FHWA) to determine the effect of not exempting the East Lansing area as has been proposed. For example, could this exemption be granted if these monitors were placed in areas of high traffic volume?

EPA Response

The hypothetical question raised can only be answered if monitors were actually placed in areas of high traffic volume. Placing a monitor in an area of high traffic volume, where high NO_x concentrations could be expected, would most likely give erroneously low ozone readings because of the fact that high NO_x concentrations have the effect of "scavenging" ozone. Therefore, there is no reason to place a monitor in an area of high traffic volume. In addition to this, as has already been mentioned in the previous response, the State of Michigan already has an approved monitoring network for this area and establishing further monitors has not been demonstrated to be warranted.

When the EPA is presented with a NO_x exemption petition, it is faced with the task of approving or disapproving such a request solely on the Clean Air Act provisions and guidance which is developed under the Clean Air Act. ISTEA does not play a role in the decision making process for NO_x exemptions.

III. Final Action

The comments received were found to warrant no changes from proposed to final action on this NO_x exemption request. Therefore, EPA is granting the East Lansing and Genesee County areas section 182(f) NO_x exemptions based upon the evidence provided by the State and the State's compliance with the requirements outlined in the Act and in EPA guidance. However, it should be noted that this exemption is being granted on a contingent basis; i.e., the exemption will last for only as long as the area's ambient monitoring data continue to demonstrate attainment of the ozone NAAQS.

Both of these areas are classified as transitional. With a classification of transitional, an area which has not been granted a NO_x exemption would be subject to general conformity, transportation conformity, and nonattainment new source review NO_x requirements. Since these petitions for exemption are applicable areawide, as opposed to source-specific, in addition to exempting these areas from the nonattainment new source review requirements for NO_x, this action also exempts these areas from the NO_x conformity requirements of the Act (see G. T. Helms, January 12, 1995 "Scope of Nitrogen Oxides (NO_x) Exemptions" memorandum).

If, subsequent to the NO_x waiver being granted, EPA determines that either area has violated the standard, the section 182(f) exemption for that area, as of the date of the determination, would no longer apply. EPA would notify the State that the exemption no longer applies, and would also provide notice to the public in the **Federal Register**. If an exemption is revoked, the State must thereafter comply with any applicable NO_x requirements set forth in the Act, such as those for NO_x NSR and conformity. The air quality data relied on for the above determinations must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System. Additionally, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area.

This action will become effective on May 30, 1995.

IV. Miscellaneous

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976).

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA's final action will relieve requirements otherwise imposed under