

US EPA ARCHIVE DOCUMENT

appropriate circuit by September 11, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it 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, approving source-specific RACT requirements for eight sources in the Commonwealth of Pennsylvania, 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, Nitrogen dioxide,

Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 22, 2006.

William T. Wisniewski,

Acting Regional Administrator, Region III.

■ 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 NN—Pennsylvania

■ 2. In Section 52.2020, the table in paragraph (d)(1) is amended by adding the entries for Pennsylvania Power & Light Company—West Shore; Foster

Wheeler Mt. Carmel, Inc.; Metropolitan Edison Company—Portland; Pennsylvania Power & Light Company—Williamsport; Pennsylvania Power & Light Company—Bald Eagle; Texas Eastern Transmission Corporation; Pennsylvania Power & Light Company—Martins Creek; and Johnstown Corporation, at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(1) * * *

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
* * * * *					
Pennsylvania Power & Light Company—West Shore.	OP-21-2009	Cumberland	6/7/95	7/11/06 [Insert page number where the document begins].	52.2020(d)(1)(r).
Foster Wheeler Mt. Carmel, Inc	OP-49-0002	Northumberland	6/30/95	7/11/06 [Insert page number where the document begins].	52.2020(d)(1)(r).
Metropolitan Edison Company—Portland	OP-48-0006	Northampton	12/14/94	7/11/06 [Insert page number where the document begins].	52.2020(d)(1)(r).
Pennsylvania Power & Light Company	OP-41-0004	Lycoming	6/13/95	7/11/06 [Insert page number where the document begins].	52.2020(d)(1)(r).
Pennsylvania Power & Light Company	OP-18-0006	Clinton		7/11/06 [Insert page number where the document begins].	52.2020(d)(1)(r).
Texas Eastern Transmission Corporation	OP-34-2002	Juniata	1/31/97	7/11/06 [Insert page number where the document begins].	52.2020(d)(1)(r).
Pennsylvania Power & Light Company	OP-48-0011	Northampton	12/14/94	7/11/06 [Insert page number where the document begins].	52.2020(d)(1)(r).
Johnstown Corporation	OP-11-000-034.	Cambria	6/23/95	7/11/06 [Insert page number where the document begins].	52.2020(d)(1)(r).

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[FR Doc. 06-6086 Filed 7-10-06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R07-OAR-2005-MO-0005; FRL-8192-4]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action on Missouri's request to incorporate two new rules and three revised rules into the State Implementation Plan (SIP) and Part 70 Operating Permit program. All of the rules pertain to Missouri's air permits program. Because of the state's request for approval of portions of the rules, EPA is not taking final action on all of the state-adopted rules. We are approving revisions to the Construction Permits Required rule and conditionally approving portions of the Construction Permits Required rule, which reference the Construction Permits by Rule. We are approving the Construction Permit Exemptions rule, except for the

livestock markets and livestock operations exemption. We are conditionally approving the Construction Permits By Rule except for the livestock markets and livestock operations exemption.

EFFECTIVE DATE: This rule is effective on August 10, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2005-MO-0005. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, KS. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT:

Amy Algoe-Eakin at (913) 551-7942, or by e-mail at algoe-eakin.amy@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we", "us", or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?

What Is the Federal Approval Process for a SIP?

What Does Federal Approval of a State Regulation Mean to Me?

What Is the Part 70 Operating Permits Program?

What Is the Federal Approval Process for an Operating Permits Program?

What Is Being Addressed in This Document?

Have the Requirements for Approval of a SIP Revision and a Part 70 Revision Been Met?

What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA or Act) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards (NAAQS) established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the final Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA. If a state regulation is disapproved, it is not incorporated into the Federally-approved SIP and is not enforceable by EPA or by citizens under section 304. In the case of a revision to a Federally-approved state regulation, disapproval of the revision means that the underlying state regulation prior to the state's revision remains as the Federally enforceable requirement.

What Is the Part 70 Operating Permits Program?

The CAA amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements

under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" source of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all source regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide or PM₁₀; those that emit 10 per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state and local agencies operating permits program are also subject to public notice, comment and our approval.

What Is the Federal Approval Process for an Operating Permits Program?

In order for state regulations to be incorporated into the Federally enforceable part 70 operating permits program, states must formally adopt regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the approved operating permits program. We must provide public notice and seek additional public comment regarding the final Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA are incorporated into the Federally-approved operating permits program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled, "Approval Status of State and Local Operating Permits Programs."

What Is Being Addressed in This Document?

On July 14, 2004, Missouri requested that EPA revise the SIP to include two new rules and three revised rules and revise the Part 70 program to include revisions to two rules. All of these rules pertain to Missouri's air permit program and will assist in effective management of Missouri's air permitting program and provide clarity to the program. These rules were adopted by the Missouri Air Conservation Commission on June 26, 2003, and became effective under state law on October 30, 2003. When Missouri submitted these rules to EPA, Missouri included the comments made on the rules during the state's adoption process, the state's response to comments, and other information necessary to meet EPA's completeness criteria. For additional information on the completeness criteria, the reader should refer to 40 CFR part 51, appendix V.

On March 22, 2006 (71 FR 14439), EPA published a proposed rule on MDNR's request to revise the SIP. No comments were received, and EPA is proceeding by taking final action in response to this request.

We are approving MDNR's request to include, as a revision to Missouri's SIP and Part 70 Operating Permit program, amendments to rule 10 CSR 10-6.020, Definitions and Common Reference Tables. We are approving and conditionally approving revisions to the Construction Permits Required rule, 10 CSR 10-6.060. The parts of rule 10 CSR 10-6.060 that are being conditionally approved are the references to 10 CSR 10-6.062, Construction Permits By Rule, which is being conditionally approved in its entirety, as discussed later in this document.

We are also approving the Construction Permit Exemptions rule, 10 CSR 10-6.061, except for subparagraph (3)(A)2.D, of 10 CSR 10-6.061 which is an exemption for livestock markets and livestock operations constructed on or before November 30, 2003. We are not acting on this section because Missouri withdrew this section from its request in an October 25, 2005, letter from the Director of Missouri's Air Pollution Control Program to the EPA Region 7 Regional Administrator.

We are also conditionally approving the Construction Permits By Rule, 10 CSR 10-6.062. This final conditional approval does not include paragraph (3)(B)4., which is a permit by rule for livestock operations. In an October 25, 2005, request from the Director of MDNR's Air Pollution Control Program

to EPA Region 7 Regional Administrator, Missouri withdrew this section from its request for EPA approval. EPA is conditionally approving this rule because it does not expressly include a mechanism for preconstruction review of applications received from the facilities that want to operate under this rule. Section 110(a)(2)(C) of the CAA requires that each SIP include a program to regulate construction and modification of sources to ensure that the NAAQS are achieved. EPA's implementing regulation provides that the plan must include procedures, "by which the state * * * will prevent such construction or modification" where the source or modification would violate a control strategy or interfere with attainment or maintenance of the NAAQS (see 40 CFR 51.160(b)). Because Missouri's Construction Permits By Rule, as adopted on June 26, 2003, appears to authorize construction to begin before any air quality review occurs, and the rule only provides for revocation of a permit after the source begins construction or operation, EPA believes that Missouri's preconstruction permit program is deficient with respect to sources which may qualify for the Permit By Rule. With respect to these sources, the rule does not clearly authorize Missouri to prevent construction or modification before construction or modification begins.

In order to rectify these deficiencies, the Missouri Air Conservation Commission (MACC) adopted a resolution on December 8, 2005, which is intended to clarify that Missouri, in administering this rule, will require a preconstruction review period before sources may begin construction and will amend the Construction Permits by Rule to expressly include a preconstruction review period. The MACC also directed the Missouri Department of Natural Resources' Air Pollution Control Program to complete revisions to this rule within twelve months of the December 2005 resolution. During the interim period required to promulgate an effective rule, the program is directed to conduct a maximum seven day review period procedure for permit by rule notifications submitted in accordance with Missouri rule 10 CSR 10-6.062, Construction Permits by Rule.

Because the MACC resolution serves to clarify preconstruction review, which is an issue of significant concern to EPA, we are conditionally approving into the SIP Missouri rule 10 CSR 10-6.062, Construction Permits by Rule. Section 110(k)(4) of the CAA states that EPA may conditionally approve a plan based on a commitment from the state

to adopt specific enforceable measures within one year from the date of approval. If the state fails to meet its commitment within the one-year period, the approval is treated as a disapproval. As such, this rule is being approved with the condition that Missouri must revise the Construction Permits By Rule to incorporate a preconstruction review period and submit this revised rule for inclusion into the SIP to EPA within one year of the date of this approval.

Finally, Missouri's submittal includes revisions to Missouri's Operating Permits Rule in 10 CSR 10-6.065. The rule revisions for rule 10 CSR 10-6.065 relate solely to the state's basic operating permit program that are not included in Missouri's approved Part 70 Operating Permits program or SIP. Therefore, we are not acting on these revisions.

Have the Requirements for Approval of a SIP Revision and a Part 70 Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the Technical Support Document (TSD) that is part of this rule, except as noted with respect to the permits by rule provision discussed above, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations. Finally, the submittal met the substantive requirements of Title V of the 1990 CAA Amendments and 40 CFR part 70.

What Action Is EPA Taking?

EPA is taking four actions:

(1) EPA is approving revisions to the Definitions and Common Reference Tables rule in the SIP and Part 70 Operating Permit Program.

(2) EPA is approving, as an amendment to the SIP, revisions to the Construction Permits Required rule and conditionally approving portions of the Construction Permits Required rule, which reference the Construction Permits by Rule.

(3) EPA is approving into the SIP a new rule, Construction Permit Exemptions, except for the livestock markets and livestock operations exemption which was withdrawn in an October 25, 2005, request from the state of Missouri.

(4) EPA is conditionally approving, as an amendment to the Missouri SIP, the Construction Permits By Rule except for the livestock markets and livestock operations exemption, which was

withdrawn in an October 25, 2005, request from the state of Missouri.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. 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 approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, 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 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 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). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power

and responsibilities established in the CAA. This 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 is not economically significant.

In reviewing state submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, 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. This 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.*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 11, 2006. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it 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

40 CFR Part 52

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

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 27, 2006.

James B. Gulliford,

Regional Administrator, Region 7.

■ Chapter I, Title 40 of the Code of Federal Regulations 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 AA—Missouri

■ 2. In § 52.1320(c) the table is amended under Chapter 6 by:

■ a. Revising the entries for 10–6.020 and 10–6.060.

■ b. Adding entries for 10–6.061 and 10–6.062.

The revisions and additions read as follows:

§ 52.1320 Identification of plan.

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(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * *	* * *	* * *	* * *	* * *
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
10–6.020	Definitions and Common Reference Tables.	10/30/2003	07/11/06 [insert FR page number where the document begins].	
10–6.060	Construction Permits Required.	10/30/2003	07/11/06 [insert FR page number where the document begins].	We are conditionally approving references to 10 CSR 10–6.062 contained in the last sentence of Section (1)(B) and all of section (1)(D).
10–6.061	Construction Permit Exemptions.	10/30/2003	07/11/06 [insert FR page number where the document begins].	Section (3)(A)2.D. is not included in the SIP.
10–6.062	Construction Permits By Rule.	10/30/2003	07/11/06 [insert FR page number where the document begins].	We are conditionally approving this rule except for Section (3)(B)4., which is not included in the SIP.

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PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

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

Appendix A—[Amended]

■ 2. Appendix A to part 70 is amended by adding paragraph (r) under Missouri to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

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Missouri

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(r) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.020, “Definitions and Common Reference Tables,” on June 30, 2004, approval effective August 10, 2006.

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[FR Doc. 06–6092 Filed 7–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2005–0548; FRL–8191–9]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the Charleston Nonattainment Area to Attainment and Approval of the Area’s Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a redesignation request and a State Implementation Plan (SIP) revision submitted by the State of West Virginia. The West Virginia Department of Environmental Protection (WVDEP) is requesting that the Charleston area be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). In conjunction with its redesignation request, the State submitted a SIP revision consisting of a maintenance plan for the Charleston area that provides for continued attainment of the 8-hour ozone NAAQS for the next 12 years, until 2018. Concurrently, EPA is approving the maintenance plan as meeting the requirements of Clean Air Act (CAA) 175A(b) with respect to the 1-hour ozone maintenance plan update. EPA is also approving the adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the 8-hour maintenance plan for the Charleston area for

purposes of transportation conformity, and is approving those MVEBs. EPA is approving the redesignation request and the maintenance plan revision to the West Virginia SIP in accordance with the requirements of the CAA.

EFFECTIVE DATE: This final rule is effective on August 10, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2005–0548. All documents in the docket are listed in the www.regulations.gov Web Site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, WV 25304.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156, or by e-mail at caprio.amy@epa.gov.

SUPPLEMENTARY INFORMATION: