

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.597 [Suspended]

2. From November 1, 2002 through May 10, 2003, § 117.597 is suspended.

3. From November 1, 2002 through May 10, 2003, § 117.1602 is temporarily added to read as follows:

§ 117.1602 Dorchester Bay

The draw of the William T. Morrissey Boulevard Bridge, mile 0.0, at Boston, need not open for the passage of vessel traffic.

Dated: August 26, 2002.

V.S. Crea,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–22337 Filed 8–30–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket WA–02–001; FRL–7271–9]

Finding of Attainment for PM₁₀; Wallula PM₁₀ Nonattainment Area, WA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to find that the Wallula nonattainment area in Washington has attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM₁₀) as of December 31, 2001. EPA's proposed finding is based on EPA's review of monitored air quality data reported for the years 1999 through 2001.

DATES: Written comments must be received on or before October 3, 2002.

ADDRESSES: Written comments may be mailed to Donna Deneen, Office of Air Quality, Mailcode OAQ–107, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of documents relevant to this action are available for public review during normal business hours (8 a.m. to 4:30 p.m.) at this same address.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle Washington, 98101, (206) 553–6706.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Designation and Classification of PM₁₀ Nonattainment Areas

The Wallula area was designated nonattainment for PM₁₀ and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act upon enactment of the Clean Air Act Amendments of 1990 (Act or CAA).¹ See 40 CFR 81.348 (PM₁₀ Initial Nonattainment Areas); *see also* 56 FR 56694 (November 6, 1991). Under subsections 188(a) and (c)(1) of the Act, all initial moderate PM₁₀ nonattainment areas had the same applicable attainment date of December 31, 1994.

States containing initial moderate PM₁₀ nonattainment areas were required to develop and submit to EPA by November 15, 1991, a state implementation plan (SIP) revision providing for, among other things, implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration of attainment of the PM₁₀ NAAQS by December 31, 1994. *See* Section 189(a) of the CAA.² In response to this submission requirement, the Washington Department of Ecology (Ecology) submitted a SIP revision for Wallula on November 15, 1991. Subsequently, Ecology submitted additional information indicating that nonanthropogenic sources may be significant in the Wallula nonattainment area during windblown dust events. Based on our review of the State's submissions, we deferred action on several elements in the Wallula SIP, approved the control measures in the SIP as meeting RACM/RACT, and, under section 188(f) of the CAA, granted a temporary waiver to extend the attainment date for Wallula to December

31, 1997. *See* 60 FR 63109 (December 6, 1995)(proposed action); 62 FR 3800 (January 27, 1997) (final action). The temporary waiver was intended to provide Ecology time to evaluate further the Wallula nonattainment area and to determine the significance of the anthropogenic and nonanthropogenic sources impacting the area. Once these activities were complete or the temporary waiver expired, EPA was to make a decision on whether the area was eligible for a permanent waiver under section 188(f) of the CAA or whether the area had attained the standard by the extended attainment date. *See* 62 FR at 3802.

On February 9, 2001, EPA published a **Federal Register** notice making a final determination that the Wallula area had not attained the PM₁₀ standard by the attainment date of December 31, 1997. *See* 66 FR 9663 (February 9, 2001) (final action); (65 FR 69275 (November 16, 2000) (proposed action). EPA made this determination based on air quality data for calendar years 1995, 1996, and 1997. As a result of that finding, the Wallula PM₁₀ nonattainment area was reclassified by operation of law as a serious PM₁₀ nonattainment area effective March 12, 2001 with an attainment date of December 31, 2001.³ *See* 188(b)(2)(A) and 188(c)(2).

B. Attainment Determinations

Pursuant to sections 179(c) of the CAA, we have the responsibility of determining within six months of the applicable attainment date whether, based on air quality data, PM₁₀ nonattainment areas attained the PM₁₀ NAAQS by that date. Determinations under section 179(c)(1) of the Act are to be based upon the area's "air quality as of the attainment date."

Generally, we determine whether an area's air quality is meeting the PM₁₀ NAAQS for purposes of section 179(c)(1) based upon data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring stations (NAMS) in the nonattainment areas and entered into the EPA Air Quality Subsystem (AQS). Data entered into the AQS has been determined to meet Federal monitoring requirements (*see* 40 CFR 50.6, 40 CFR part 50, appendix J, 40 CFR part 53, 40 CFR part 58, appendix A & B) and may be used to determine the attainment status of areas. We also

¹ The 1990 Amendments to the CAA made significant changes to the CAA. *See* Public Law 101–549, 104 Stat. 2399. References herein are to the CAA as amended in 1990. The Clean Air Act is codified, as amended, in the United States Code at 42 U.S.C. 7401 *et seq.*

² The moderate area SIP requirements are set forth in section 189(a) of the CAA.

³ Under section 188(c)(2) of the CAA, attainment areas designated nonattainment for PM₁₀ under section 107(d)(4) of the CAA were required to attain the PM₁₀ standard no later than December 31, 2001. As discussed above, Wallula was designated nonattainment under section 107(d)(4) of the CAA.

consider air quality data from other air monitoring stations in the nonattainment area provided that the stations meet the Federal monitoring requirements for SLAMS. All data are reviewed to determine the area's air quality status in accordance with our guidance at 40 CFR part 50, appendix K.

Attainment of the annual PM_{10} standard is achieved when the annual arithmetic mean PM_{10} concentration over a three-year period (for example 1999, 2000, and 2001 for areas with a December 31, 2001 attainment date) is equal to or less than 50 micrograms per cubic meter ($\mu g/m^3$). Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM_{10} concentrations greater than 150 $\mu g/m^3$. The 24-hour standard is attained when the expected number of days with levels above 150 $\mu g/m^3$ (averaged over a three-year period) is less than or equal to one. Three consecutive years of air quality data are generally required to show attainment of the annual and 24-hour standards for PM_{10} . See 40 CFR part 50 and appendix K.

II. EPA's Proposed Action

A. Monitored Air Quality Data

Ecology established and operates one PM_{10} SLAMS monitoring sites in the Wallula PM_{10} nonattainment area. The Wallula monitor meets EPA SLAMS network design and siting requirements, set forth at 40 CFR part 58, appendices D and E, and has been monitoring for PM_{10} since before 1990. Because the Wallula monitor is scheduled to sample only once every six days, each measured exceedance is generally counted as six expected exceedances and would generally represent a violation of the 24-hour PM_{10} standard.

The air quality data in AQS for this monitor shows that, for the three-year period from 1999 through 2001, there were no violations of the annual PM_{10} standard. The annual PM_{10} NAAQS is 50 $\mu g/m^3$. The annual average concentration for 1999, 2000, and 2001 were 34 $\mu g/m^3$, 29 $\mu g/m^3$, and 29 $\mu g/m^3$, respectively. Based on this information, EPA has determined that the area attained the annual PM_{10} standard as of the extended attainment date of December 31, 2001.

With respect to the 24-hour PM_{10} standard, a review of the air quality data in AQS for the three-year period from 1999 through 2001 shows that there were two recorded exceedance of the 24-hour PM_{10} standard recorded at the Wallula monitor: A concentration of 297 $\mu g/m^3$ on June 23, 1999, and a concentration of 215 $\mu g/m^3$ on August

10, 2000. The State has flagged both of these exceedances as attributable to high wind "natural events." The next highest 24-hour PM_{10} concentrations measured during this time period were 126 $\mu g/m^3$ on June 29, 1999 and 109 $\mu g/m^3$ on July 12, 2001. Other than those, no other concentrations above 100 $\mu g/m^3$ were measured at the monitor during the rest of the 3-year period. These data suggest that the 24-hour average PM_{10} concentration in the Wallula area is generally well below the standard, but for "natural events."

B. Natural Event Determinations

Wallula, Washington is located in eastern Washington on the Columbia Plateau. The Columbia Plateau is known for its prolonged periods of strong winds which carry dust particulates for hundreds of miles downwind. Wind erosion is a particular problem on the Plateau because of the natural dustiness of the region due to its dry environments, scant vegetation, unpredictable high winds, and soils which contain substantial quantities of PM_{10} size and smaller particulate matter. See "Farming with the Wind: Best Management Practices for Controlling Wind Erosion and Air Quality on Columbia Plateau Croplands," (1998).

Under section 107(d)(4)(B)(ii) of the CAA and 40 CFR part 50, appendix K, section 2.4, specific exceedances due to uncontrollable natural events, such as unusually high winds, may be discounted or excluded entirely from decisions regarding an area's air quality status in appropriate circumstances. See Memorandum from EPA's Assistant Administrator for Air and Radiation to EPA Regional Air Directors entitled "Areas Affected by Natural Events," dated May 30, 1996 (EPA's Natural Events Policy). EPA has stated that it will treat ambient PM_{10} exceedances caused by dust raised by unusually high winds as due to uncontrollable natural events (and thus excludable from attainment determinations) if either (1) the dust originated from nonanthropogenic sources or (2) the dust originated from anthropogenic sources controlled with best available control measures (BACM). See Natural Events Policy, pp. 4–5. This approach recognizes that while exceedances of the PM_{10} standard during unusually high winds may not be entirely preventable, there still are measures that can be taken to help protect public health. EPA's Natural Events Policy sets forth a process for declaring an exceedance as due to natural events and for documenting a natural events claim. Where a State believes natural events

have caused a violation of the NAAQS, the State enters the exceedance in the EPA data base, flags the exceedance as being attributable to a natural event, documents a clear causal relationship between the measured exceedance and the natural event, and develops a natural events action plan (NEAP) that is tailored to the PM_{10} sources and the circumstances which caused the exceedance. The NEAP should include commitments to: (1) Establish public education and notification programs; (2) minimize public exposure to high concentrations of PM_{10} due to future natural events; (3) abate or minimize contributing controllable sources of PM_{10} which includes the application of "best available control measures" (BACM) to any sources of soil that have been disturbed by anthropogenic activities; (4) identify, study, and implement practical mitigating measures as necessary; and (5) periodically reevaluate the NEAP. See Natural Events Policy, pp. 5–8. In the case of high-wind events where the sources of dust are anthropogenic, the State should also document that BACM were required for those sources and that sources were in compliance with BACM at the time of the high-wind event. If BACM are not required for some dust sources, the NEAP must include agreements with appropriate stakeholders to minimize future emissions from such sources using BACM.

As discussed above, Ecology flagged the June 23, 1999 and the August 10, 2000, exceedances in the AQS data base as exceedances caused by high winds under EPA's Natural Events Policy. Ecology has also flagged exceedances that occurred on June 21, 1997 and July 10, 1998 as natural events. As discussed in more detail below and in the technical support document, EPA concludes that the June 21, 1997, July 10, 1998, June 23, 1999, and August 10, 2000, exceedances qualify as high wind natural events under EPA's Natural Events Policy. Therefore, EPA proposes to exclude the 1999 and 2000 exceedances from consideration in determining whether the Wallula PM_{10} nonattainment area attained the 24-hour as of December 31, 2001. As a result, the expected number of days over the 24-hour standard for 1999, 2000, and 2001 is 0.0 and, when averaged over the three-year period from 1999 through 2001, the three-year expected exceedance rate is also 0.0. EPA therefore believes that the Wallula PM_{10} nonattainment area attained the 24-hour PM_{10} standard as of the serious area attainment date of December 31, 2001.

(1) Causal Relationship Between High Winds and Exceedances

EPA's Natural Events Policy provides that "the State is responsible for establishing a clear causal relationship between the measured exceedance and the natural event." Natural Events Policy, p. 8. Ecology provided meteorological data to support its position that the exceedances measured at the Wallula monitor on June 21, 1997, July 10, 1998, June 23, 1999, and August 10, 2000 were due to high wind natural events. These data show that the highest average hourly values on three of the four days, June 21, 1997, June 10, 1998, and August 10, 2000, reached 31 mph, 27 mph, and 38 mph, respectively. These windspeeds were greater than 23 mph, which is the windspeed level Ecology uses generally to evaluate whether conditions are sufficient to produce significant concentrations of airborne dust. See, e.g., Documentation of Natural Event Due to High Winds, August 10, 2000, Wallula, Washington, page 3. Based on these recorded windspeeds, along with additional information documenting the lack of precipitation preceding those days, newspaper articles documenting severe dust storms resulting from the high winds, and additional information regarding wind direction and sources in the area, Ecology has shown a clear causal relationship between the high winds and the high PM₁₀ values for those days. See Ecology's Natural Event submissions for June 21, 1997, June 10, 1998, and August 10, 2000.

On June 23, 1999, the highest average hourly windspeed and average daily windspeed of 15 mph and 10 mph, respectively, were lower than for the other three days. Since these lower windspeeds, on their own, did not explain the high levels of PM₁₀ measured at the monitor, Ecology conducted an investigation to determine what other activities or sources may have led to the exceedance. First, Ecology investigated whether local sources, such as the nearby pulp mill (primarily a combustion source) or feed lot, may have contributed to the exceedance. Based on meteorological data showing that the winds came from the direction of the pulp mill and the feed lot for only a short period of time, Ecology determined that these local sources could have been only insignificant contributors to the 24-hour concentration on June 23, 1999. Second, Ecology also evaluated the results of filter analysis for June 23, 1999. This analysis showed that the particulate on the filter was primarily crustal material, rather than combustion material. The

presence of crustal material on the filter is consistent with what would be expected to be found as a result of a high wind event.

With the feedlot and pulp mill ruled out as the primary contributors to the exceedance on June 23, 1999, and no other local sources known to potentially have a large impact on the monitor, Ecology looked more closely at the regional meteorology and/or other unique conditions that could account for the high concentrations at the monitor. This investigation revealed that high average hourly windspeeds (more than 20 mph) had, in fact, been recorded at several meteorological stations in Eastern Washington on the evening of June 22, 1999 (*i.e.*, at Pasco, Ephrata, Moses Lake, Hanford, and Pendleton). In addition, weather data from Washington State University showed that in many areas in the region, no precipitation had been measured for as many as 36 days prior to June 23, 1999, making area soils vulnerable to entrainment by high winds. Ecology also considered in its investigation the unusually high concentration at the monitor (consistent with a high wind event), the possibility of elevated winds channeling through nearby Wallula Gap (but then dissipating at the monitor), and filter analysis showing wind blown dust on the filter. Ecology concluded that, although it was impossible to discern the exact high wind event that caused the June 23, 1999, exceedance, meteorological and other conditions clearly supported the occurrence of such a natural event and that it was therefore reasonable to attribute the June 23, 1999 exceedance as due to a high wind natural event.

Based on the information provided by Ecology, EPA agrees with Ecology that it is reasonable to treat the June 23, 1999, exceedance as due to a natural event. Note that consideration of this event as due to high winds does not eliminate the need for efforts to reduce the emissions of windblown dust to the extent practicable. This issue is discussed in more detail below.

(2) BACM on Contributing Anthropogenic Sources of Windblown Dust

EPA's Natural Events Policy states that PM₁₀ exceedances "due to dust raised by unusually high winds will be treated as due to uncontrollable natural events under the following conditions: (1) The dust originated from anthropogenic sources, or (2) the dust originated from anthropogenic sources controlled with BACM. "The BACM must be implemented at contributing anthropogenic sources of dust in order

for PM₁₀ NAAQS exceedances to be treated as due to uncontrollable natural events under this policy." Natural Events Policy, pp. 4–5. The Natural Events Policy further states that the Natural Events Action Plan developed by the State should include commitments to "abate or minimize appropriate contributing controllable sources of PM₁₀." In the case of high winds, such a program should include "application of BACM to any sources of soil that have been disturbed by anthropogenic activities." Natural Events Policy, p. 6. If BACM are not defined for the anthropogenic sources at the time the NEAP is developed, the NEAP should identify, study and implement practical mitigating measures as necessary. Natural Events Policy, p. 7.

In response to EPA's May 1996 Natural Events Policy, Ecology prepared and submitted a Natural Events Action Plan for the Columbia Plateau to EPA in March 1998 (Columbia Plateau NEAP), which includes the Wallula nonattainment area. Ecology also provided information following up on the Columbia Plateau NEAP in 1999 and March 2001. The Columbia Plateau NEAP identifies dust from upwind agricultural fields as the chief source of high levels of PM₁₀ in the Columbia Plateau. In the NEAP, Ecology described BACM for agricultural lands as being equivalent to Best Management Practices (BMPs) and explained that BMPs are measures that offer the greatest level of control given available technology and economic considerations. Columbia Plateau NEAP, pg. 12. BMPs for agricultural lands in the Columbia Plateau have been identified in "Farming with the Wind: Best Management Practices for Controlling Wind Erosion and Air Quality on Columbia Plateau Croplands," (1998), a publication that has been widely distributed to farmers in the Columbia Plateau.

Data collected by the Natural Resources Conservation Service (NRCS) provides information on the extent of the use of BMPs in Benton and Walla Walla Counties at the time of the exceedances. The data show that the overall trend of tillage BMPs⁴ in Benton and Walla Walla Counties is upward, with more than 50% of planted land using tillage BMPs in Benton County and with more than 77% of planted land using tillage BMPs in Walla Walla County, the county in which the

⁴ "Tillage" BMPs includes conservation tillage and conventional tillage with 15–30 percent residue.

majority of the nonattainment area is located.

The data also show an increase in the amount of acreage in Benton County and Walla Walla County that has been put in the USDA Conservation Reserve Program (CRP). The CRP is particularly effective in reducing dust emissions because permanent vegetative cover on those lands reduces the opportunity for erosion to occur. In both counties, the CRP acreage percentage increased substantially from 1994 to 2000. In Benton County, CRP acreage increased by over 100 percent, while in Walla Walla County, CRP acreage increased by almost 40 percent. This increase is another indication of the widespread use and the overall upward trend in the use of BMPs in the Wallula area. In sum, data show that of total planted and CRP acreage, 63 percent in Benton County and 84 percent in Walla Walla County used tillage BMPs or was placed in the CRP in 2000.

Based on the information provided by Ecology, other available information showing widespread use of, and an overall upward trend in, the use of BMPs in the Wallula area from 1994 to 2000, and the area's soil and climate characteristics, EPA concludes that BACM was being implemented at the time of the June 21, 1997, July 10, 1998, June 23, 1999, and August 10, 2000 exceedances. EPA, therefore, believes that these exceedances should be excluded from consideration in attainment determinations for the Wallula PM₁₀ nonattainment area and that, in the absence of any other exceedances during 1999, 2000, and 2001, the Wallula PM₁₀ nonattainment area attained the 24-hour PM₁₀ standard as of the serious area attainment date of December 31, 2001. EPA notes, however, that identification and application of BACM for agricultural lands is evolving. EPA expects Ecology to continue efforts in identifying and implementing BACM on sources of agricultural windblown dust in the Wallula area in order for future exceedances caused by high winds to be characterized as "natural events" and excluded in attainment determinations. This includes reviewing and revising the Columbia Plateau NEAP on a periodic basis to ensure continued implementation of BACM on sources of wind blown dust in the area.

C. Effect of Proposed Finding of Attainment

As discussed above, EPA proposes to find that the Wallula PM₁₀ nonattainment area attained the PM₁₀ NAAQS as of the serious area attainment date of December 31, 2001.

If we finalize this proposal, consistent with CAA section 188, the area will remain a serious PM₁₀ nonattainment area, but will avoid the additional planning requirements that apply to serious PM₁₀ nonattainment areas that fail to meet the attainment date under section 189(d) of the CAA.

This proposed finding of attainment should not be confused with a redesignation to attainment under CAA section 107(d). Washington has not submitted a serious area plan for the Wallula area that meets the requirements of section 189(b) of the CAA. In addition, Washington has not submitted a maintenance plan as required under section 175(A) of the CAA or met the other CAA requirements for redesignations to attainment. The designation status in 40 CFR part 81 will remain serious nonattainment for the Wallula PM₁₀ nonattainment area until such time as Washington meets the CAA requirements for redesignations to attainment.

We are soliciting public comments on EPA's proposal to find that the Wallula PM₁₀ nonattainment area has attained the PM₁₀ NAAQS as of the December 31, 2001, attainment date. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking process by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document.

III. Administrative Requirements

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 proposed action merely makes a determination based on air quality data and does not impose any requirements. Accordingly, the Administrator certifies that this proposed finding 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 proposed finding does not impose any enforceable duty, 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 finding 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 proposed action merely makes a determination based on air quality data and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed finding 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.

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

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 23, 2002.

John Iani,

Regional Administrator, Region 10.

[FR Doc. 02-22362 Filed 8-30-02; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5b

Privacy Act, Exempt Record System

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office for Civil Rights (OCR) of the Department of Health and Human Services is implementing a new System of Records (SOR) called the "Program Information Management System (PIMS), HHS/OS/OCR (09-90-0052)." PIMS effectively combines, and