to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. 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. section 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**. This rule is not a ''major'' rule as defined by 5 U.S.C. section 804(2). This rule will be effective June 11, 2001.

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 July 9, 2001. 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 19, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 52, 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 HH—New York

2. Section 52.1683 is amended by adding new paragraph (h) to read as follows:

§ 52.1683 Control strategy: Ozone.

* * * * *

(h)(1) The 1990 base year emission inventory as revised on February 2, 1999 (Volatile organic compounds (VOC), Nitrogen oxides (NO_X) and Carbon monoxide (CO) for areas designated nonattainment for ozone since 1991 in New York) is approved.

(2) The 1996 and 1999 ozone projection year emission inventories included in New York's February 2, 1999 State Implementation Plan revision for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area are approved.

(3) The 1996 and 1999 conformity emission budgets for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area included in New York's February 2, 1999 State Implementation Plan revision are approved.

(4) The photochemical assessment monitoring stations network included in New York's February 2, 1999 State Implementation Plan revision is approved.

(5) The demonstration that emissions from growth in vehicle miles traveled will not increase total motor vehicle emissions and, therefore, offsetting measures are not necessary, which was included in New York's February 2, 1999 State Implementation Plan revision for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area is approved.

(6) The enforceable commitments to: participate in the consultative process to address regional transport; adopt additional control measures as necessary to attain the ozone standard, meeting rate of progress requirements, and eliminating significant contribution to nonattainment downwind; identify any reductions that are needed from upwind areas for the area to meet the ozone standard, included in New York's February 2, 1999 State Implementation Plan revision for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area are approved.

(7) The 15 Percent Rate of Progress Plan and the 9 Percent Reasonable Further Progress Plan included in the New York's February 2, 1999 State Implementation Plan revision for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area are approved.

[FR Doc. 01–11835 Filed 5–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NY46–217a, FRL–6977–2]

Approval and Promulgation of State Plans For Designated Facilities; NY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the New York supplementary submittal for meeting EPA's conditional approval of the New York State Plan for regulating existing MSW Landfills. The State Plan establishes performance standards for existing Municipal Solid Waste landfills located in New York State and provides for the implementation and enforcement of those standards, which will reduce the designated pollutants.

DATES: This direct final rule is effective on July 9, 2001 without further notice, unless EPA receives adverse comment by June 11, 2001. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866.

Copies of the state submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Craig Flamm, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New

York 10007–1866, (212) 637–4021, email: *flamm.craig@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On July 19, 1999 (64 FR 38582), EPA conditionally approved the New York State Plan for regulating existing Municipal Solid Waste (MSW) Landfills. The reader is referred to the July 19, 1999 rulemaking action for a more detailed description and the rationale of EPA's conditional approval of the New York MSW Landfills State Plan. The conditional approval was contingent on New York providing EPA with modified Title V or State Operating Permits containing compliance schedules with all five increments of progress outlined in Subpart Cc of 40 CFR part 60, the Emission Guidelines for existing Municipal Solid Waste Landfills. The permits were due within one year of the effective date of the conditional approval, September 17, 1999.

On September 18, 2000, the New York State Department of Environmental Conservation (NYSDEC) submitted a statement that NYSDEC inspected all previously identified landfills in New York that meet the criteria for a major source. The NYSDEC identified one landfill out of compliance and one newly identified landfill which is currently under review by the NSDEC and which might require controls. The NYSDEC stated that during the inspections it was confirmed that the rest of the landfills in question were in compliance with New York's State Plan thereby making increments of progress unnecessary for these landfills.

The two landfills that are not in compliance currently are the Ontario Landfill and the Babylon Landfill. EPA received a timely Title V operating permit with appropriate increments of progress and compliance deadlines for the Ontario Landfill. The Babylon Landfill was discovered only recently by NYSDEC, and EPA is confident that the landfill was discovered in good faith and that an appropriate applicability determination will be completed in a timely manner and a compliance schedule with increments of progress will be submitted to the EPA if they are needed. All remaining landfills in New York have met the requirements for all five increments of progress. Should New York identify any new Municipal Solid Waste Landfills that meet the existing landfill criteria and require controls, New York shall submit increments of progress for those facilities as well to the EPA.

Conclusion

EPA has evaluated the Municipal Solid Waste Landfill State Plan submitted by New York for consistency with the Act, EPA guidelines and policy. EPA has determined that New York's State Plan contains all approvable elements and critical compliance dates. Therefore, EPA is approving New York's Plan to implement and enforce 40 CFR Subpart Cc, as it applies to existing MSW Landfills.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan revision should adverse comments be filed. This rule will be effective July 9, 2001 without further notice unless the Agency receives adverse comments by June 11, 2001.

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This final 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 final 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 (Public Law 104–4). For the same reason, this final rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This final rule will 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 approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This final rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State Plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 Plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State Plan submission, to use VCS in place of a State Plan submission that otherwise satisfies the provisions of the Clean Air Act. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. 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**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2). This rule will be effective July 9, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2001. 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 in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: April 19, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 01–11829 Filed 5–9–01; 8:45 am]

BILLING CODE 6560–50–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1611

Testimony by Employees in Legal Proceedings

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Final rule.

SUMMARY: This rule amends 40 CFR part 1611 (Testimony by Employees in Legal Proceedings), published at 66 FR 17364 (March 30, 2001). Part 1611 provides the Chemical Safety and Hazard Investigation Board's (CSB) policy concerning testimony of CSB employees in legal proceedings. This rule amends § 1611.2 (Definitions) to add a definition of ''employee'' and amends § 1611.6 (Testimony of former CSB employees) to add a requirement that former employees notify the CSB General Counsel when they are served with a subpoena relating to work performed for the CSB.

DATES: This rule is effective May 10, 2001.

FOR FURTHER INFORMATION CONTACT: Raymond C. Porfiri, (202) 261–7600.

SUPPLEMENTARY INFORMATION: (1) Amendment to section 1611.2. The current CSB rule on testimony by employees in legal proceedings, 40 CFR part 1611, published at 66 FR 17364 (March 30, 2001) does not define ''employee.'' The CSB has determined that for the purpose of part 1611 (as well as part 1612, ''Production of Records in Legal Proceedings'') ''employee'' should be defined to include all those who undertake work for the CSB and who may come into contact with protected information. Thus ''employee'' is defined to include: current or former CSB Board Members or employees, including student interns, and contractors, contract employees, or consultants (and their employees). But it is made clear that this definition does not include persons who are no longer employed by or under contract to the CSB, and who are retained or hired as expert witnesses or agree to testify about matters that do not involve their work for the CSB.

Other agencies have included a similarly broad definition of employee for this purpose. *See, e.g.,* Federal Energy Regulatory Commission, 18 CFR 388.111; Department of State, 22 CFR 172.1; USAID, 22 CFR 206.1; Overseas Private Investment Corporation, 22 CFR 713.10; Department of the Navy, 32 CFR 725.4; and U.S. Postal Service, 39 CFR 265.13. Moreover, CSB contractors are already required to sign non-disclosure agreements, prohibiting them from disclosing in any forum (except to CSB employees) trade secret or confidential business information obtained in their work for the CSB.

The need for this broad definition of employee is even more necessary at the CSB because, pursuant to 42 U.S.C. 7412(r)(6)(G), no part of the conclusions, findings or recommendations of the CSB relating to an accidental release or the investigation thereof, may be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report.

(2) Amendment to section 1611.6. The current rule pertaining to former employees is clarified to include a requirement that any former employee who is served with a subpoena to appear and testify in connection with civil litigation that relates to his or her work with the CSB, shall immediately notify the CSB General Counsel and provide all information requested by the General Counsel. This clarification is necessary to give notice to former employees of their obligation in this regard, and to provide the agency with advance notice of a potential problem.

Public Comment Procedures: Because this rule amends an internal policy for CSB employees, the Administrative Procedure Act does not require that it be published as a proposed regulation for notice and public comment. *See* 5 U.S.C. 553(a)(2). This rule provides immediate clarifying guidance pertaining to CSB employee testimony. As such, the CSB finds that good cause exists for making the regulation effective immediately upon publication. *See* 5 U.S.C. 553(b)(3)(B).

Compliance With Other Laws

Regulatory Planning and Review (E.O. 12866)

This regulation is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This regulation will not have an effect of $100 million or more on the economy. This regulation regulates how and when CSB employee testimony may be provided in certain situations. As such, it will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

(2) This regulation will not create a serious inconsistency or interfere with an action taken or planned by another agency.

(3) This regulation does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This regulation is consistent with well-established constitutional and statutory principles and does not raise novel legal or policy issues.

Regulatory Flexibility Act

The CSB certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This regulation merely regulates how and when CSB employees may testify in certain situations.

Small Business Regulatory Enforcement Fairness Act

This regulation is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. Because this regulation only regulates how and when CSB employees may testify in certain situations, this regulation:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions.