

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6504-1]

Inadequacy Status of Submitted State Implementation Plans for Transportation Conformity Purposes: Houston Attainment Demonstration Plan**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of inadequacy status.

SUMMARY: In this document, EPA is notifying the public of its finding of inadequacy of the motor vehicle emissions budgets (budgets) in the State Implementation Plan (SIP) submitted on May 19, 1998, for purposes of demonstration of attainment of ozone National Ambient Air Quality Standards in the Houston nonattainment area, because the SIP did not include any budgets for volatile organic compound and nitrogen oxide. On March 2, 1999, the D.C. Circuit Court ruled that submitted SIPs cannot be used for transportation conformity determinations until EPA has affirmatively found them adequate. Since the May 19, 1998, submittal does not contain adequate budgets, this attainment demonstration can not be used for future transportation conformity determinations. No comments were received during the public comment period.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, or Mr. Ken Boyce, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202; telephone (214) 665-7247 or (214) 665-7259, behnam.jahanbakhsh@epamail.epa.gov or boyce.kenneth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Transportation conformity is required by section 176(c) of the Clean Air Act. The EPA's conformity rule, 40 CFR part 93, requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. The criteria by which EPA determines whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). An adequacy review is separate from EPA's completeness review, and it should not be used to prejudice EPA's ultimate approval of the

SIP. Even if we find a budget adequate, the SIP could later be disapproved.

On March 2, 1999, the D.C. Circuit Court of Appeals ruled that budgets contained in submitted SIPs cannot be used for conformity determinations unless EPA has affirmatively found the conformity budget adequate. Where EPA finds a budget inadequate, it cannot be used for further conformity determinations. We have described our process for determining the adequacy of submitted SIP budgets in the policy guidance dated May 14, 1999, and titled *Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision*. You may obtain a copy of this guidance from EPA's conformity web site: <http://www.epa.gov/oms/traq> (once there, click on "conformity" and then scroll down) or by contacting us at the address above.

By this notice, EPA is announcing the inadequacy determination that we have already made. On May 19, 1998, we received the Houston attainment demonstration SIP which did not contain volatile organic compound and nitrogen oxide budgets. Notice that we had received this SIP was posted on the EPA's website for a 30 day public comment period. The public comment period closed on August 21, 1999. We did not receive any comments. After the public comment process, we sent a letter to the Texas Natural Resource Conservation Commission stating that this SIP is inadequate for transportation conformity determinations.

This means that the SIP cannot be used for transportation conformity determinations. As stated in the May 14, 1999, guidance, EPA's adequacy review is not to be used to prejudice EPA's ultimate approval or disapproval of the submitted SIPs. Approvability of the SIPs will be addressed in a future rulemaking.

Therefore, the ozone attainment demonstration SIP as referenced above cannot be used for transportation conformity by the Metropolitan Planning Organization in Houston.

Dated: November 24, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-6504-2]

42 U.S.C. 122(I)**Proposed Prospective Purchaser Agreement and Covenant Not To Sue****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice; proposal of prospective purchaser agreement and covenant not to sue under CERCLA section 9601 *et seq.*, as amended, for the Circle Smelting Corporation Superfund Site.

SUMMARY: U.S. EPA is proposing to execute a Prospective Purchaser Agreement and Covenant Not to Sue (Agreement) under CERCLA section 9601 *et seq.*, as amended, for the Circle Smelting Corporation Superfund Site. The Prospective Purchaser has agreed to the reuse and redevelopment of the property, thereby creating jobs and economic growth as well as preventing the Site from remaining abandoned, and in return will receive a covenant not to sue and contribution protection from EPA. EPA today is proposing to execute this Agreement because it achieves a benefit for the community where the site is located by encouraging the reuse or redevelopment of property at which the fear of Superfund liability may have been a barrier. The Circle Smelting Site would likely have remained an abandoned lot had EPA not entered into this Prospective Purchaser Agreement and Covenant Not to Sue with the Prospective Purchasers. Therefore, this Agreement provides for the reuse and redevelopment of the Site, thereby fulfilling EPA's Brownfields initiatives and priorities.

DATES: Comments on this proposed settlement must be received on or before January 6, 2000.

ADDRESSES: A copy of the proposed Agreement is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Ms. Allison S. Gassner at (312) 886-2250, prior to visiting the Region 5 office.

Comments on the proposed Agreement should be addressed to Allison S. Gassner, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code C-14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Allison S. Gassner at (312) 886-2250, of the U.S. EPA, Region 5, Office of Regional Counsel.

SUPPLEMENTARY INFORMATION: The Circle Smelting Corporation Site is located on