

remediations. The final rule only applies to those site remediations conducted at a facility that is both a major source of HAP emissions (as defined in CAA section 112) and where there are other non-remediation stationary sources at the facility that meet one of the affected source definition specified for a source category which is regulated by another subpart under 40 CFR part 63. The facilities that meet these applicability conditions tend to be large businesses.

Furthermore, types of site remediations typically expected to occur at small businesses are not subject to the final Site Remediation NESHAP. For example, we specifically exclude from the final rule applicability those site remediations to clean up contamination resulting from leaking underground storage tanks at a gasoline service station, farm, or residential site (remediation activities at these sites were found not to exceed the threshold HAP emission levels required to be designated a major source). Also, we expect that the applicable thresholds for those site remediations required to use air pollution controls under the final Site Remediation NESHAP apply to few, if any, facilities that are small businesses. For example, use of air pollution controls are not required under the final rule for those site remediations that physically can be completed within 30 days or for which total quantity of organic HAP contained in the extracted remediation material is less than 1 Mg.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the final rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to

adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the final rule for any year has been estimated to be about \$24 million. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, the final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

The final rule does not have federalism implications. It 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. Thus, the requirements of section 6 of the Executive Order do not apply to the final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires us to develop "an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

We have concluded that the final Site Remediation NESHAP may have tribal implications since the types of site remediation activities subject to the final rule potentially could be conducted on tribal lands. However, we are not aware of any specific remediation activities on tribal lands presently being conducted that would be subject to the final rule. If a site remediation subject to the final rule is initiated on tribal lands in the future, it will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to the final rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, we nonetheless made attempts to invite tribal representatives to participate in the rulemaking activities early in the process of developing the final rule to permit them to have meaningful and timely input into its development. We contacted tribal representatives and groups directly to notify them of the final rule development activity and to solicit their participation. At proposal, we specifically requested comment on the proposed rule from tribal officials. No tribal representatives requested to participate in the rulemaking process, and we received no comments on the proposed rule from any tribal government.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of