UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

DATE: MAY 20 1997

SUBJECT: Interpretation of the 15 Percent Plan Interim Approvals

FROM: for Kathleen C. Callahan, Director
Division of Environmental Planning and Protection

TO: Director, Air, Pesticides and Toxics Management Division
Regions I and IV

Director, Air, Radiation and Toxics Division
Region III

Director, Air and Radiation Division
Regions V

Director, Air, Pesticides and Toxics Division
Region VI

Director, Air and Toxics Division
Regions VII, VIII, IX, and X

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Air Division
U.S. EPA, Region 9

This memorandum serves to summarize the consensus reached on the interpretation of 15 Percent Plan "Interim" approvals. On April 10, 1997, a national conference call was held to discuss language for Federal Register notices that propose action on 15 Percent or 9 Percent Plans for ozone that include enhanced I/M programs which will be approved under the National Highway System Designation Act (NHSDA). During the call, language drafted by the Office of General Counsel was discussed and as a result a common understanding of what "interim" approval meant was reached. The following is the overall agreement reached during the call:

1. The credits resulting from the NHSDA enhanced I/M programs, which are made available to the 15 percent and 9 Percent rate of progress plans, are being approved on an interim basis and will expire at the end of the 18 month I/M period established by the interim approval of the state's I/M program to collect data and verify the program's performance.

2. The approval of 15 Percent and 9 Percent rate of progress plans that make use of NHSDA enhanced I/M credits will also expire at the end of the 18 month period. Therefore, to the extent that these plans rely on I/M credits under the NHSDA, the plans will be given an "interim" approval.

3. The enhanced I/M program is being approved in a limited, (but not interim) way under section 110 of the Act, thus incorporating it into the SIP. This limited approval will not

expire at the end of the 18 month period and so remains a federally enforceable element of the SIP.

4. Under the NHSDA, states are required to submit a verification of the enhanced I/M program's performance by the end of the 18 month period.

5. States will have to make up any emission reduction shortfalls resulting from the enhanced I/M program verification or be subject to the full range of Clean Air Act remedies available for federally approved SIPs.

As a result of concerns expressed during the call an abbreviated version of the Federal Register language concerning the interim approval process was circulated and discussed the following day with OGC, OMS, and Regions 2 and 3. The final language agreed to by OGC, OMS and Regions 2 and 3 has been added to the New Jersey Federal Register notice proposing action on the 15 Percent and 9 Percent Plans in a section that discusses how the enhanced I/M program is being used in these plans. Similar language has also been included in the Federal Register notice acting on New Jersey's enhanced I/M program. Regions should note that this is example language, not boilerplate, and its inclusion is a regional decision and may be adjusted to individual state situations.

The language which appears in the New Jersey Federal Register is as follows:

> "By today's action, EPA proposes to approve emission credits for the 15 Percent ROP and 9 Percent RFP Plans on an interim basis, pending verification of the I/M Program's performance, pursuant to section 348 of the NHSDA. This interim approval of the 15 Percent ROP and the 9 Percent RFP Plans will expire at the end of the 18 month period, and will be replaced by appropriate EPA action based on the evaluation EPA receives concerning the Program's performance. If the evaluation indicates a shortfall in emission reductions compared to the remodeling that the 15 Percent ROP and 9 Percent RFP Plans is conditioned on, the State would need to find additional emission credits. Failure of the State to make up for an emission shortfall from the enhanced I/M program may subject the State to sanctions and imposition of a Federal Implementation Plan.
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> In addition, in a separate notice, EPA is taking both a limited conditional approval of the New Jersey enhanced I/M program under section 110 which strengthens the SIP, as well as an interim conditional approval under section 348 of the NHSDA. The limited approval of the enhanced I/M program will

not expire at the time the interim approval of the 15 Percent ROP and 9 Percent RFP plans and the interim approval of the enhanced I/M program under the NHSDA expire. As explained above, the credits provided by the I/M program on an interim basis for those plans may be adjusted based on EPA's evaluation of the I/M Program's performance."

Thank you for your assistance.

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