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Category: 45 – Criteria for Plan Revisions for Nonattainment Areas

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

SUBJECT: Continuity of SIP Regulations

FROM: David G. Hawkins, Assistant Administrator
for Air, Noise, and Radiation

DATE: September 11, 1978

MEMO TO: Regional Administrator, Regions I - X

Pursuant to Sections 107 and 172 of the Clean Air Act, many States have had areas designated as nonattainment and will be required to submit revisions to their State Implementation Plans to provide for attainment. While many of these regulations will bring previously uncontrolled sources under the purview of control regulations, there will also be a significant degree of regulation tightening. This submittal of more stringent regulations probably will result in judicial challenges to the new regulations and requests for temporary relief, in the form of variances or delayed compliance orders, from the more onerous regulatory provisions. In these situations, it is imperative that the plan retain an enforceable regulation in order to minimize any further deterioration of air quality in nonattainment areas. In order to ensure that this deterioration does not occur, it is essential to inform affected States of the procedures to be followed in submitting and approving plan revisions.

In approving a SIP revision, EPA will provide that the emission limitation contained in the existing regulations remain in effect. New requirements imposed by the plan revision will normally be treated as being in addition to, rather than in lieu of, those imposed by existing regulations. For example, if the new regulations are judicially challenged, or if the source is granted a delayed compliance order or variance which exempts it temporarily from the provisions of the new regulations, it must comply with the pre-existing regulations. Failure to meet these pre-existing standards will subject the source to appropriate enforcement actions, including the imposition of noncompliance penalties under Section 120 of the Act.

EPA's policy should be set forth in the FEDERAL REGISTER notices proposing to approve, and approving, SIP revisions. Also, the States should be informed of this policy immediately. EPA will disapprove any SIP revision to the extent it is inconsistent with this approach.

The one major exception to this rule would be when the new regulations are "inconsistent" with those currently in effect. In this situation, the State may exempt the source from the requirements of the pre-existing regulations, provided the source demonstrates that it cannot physically meet

the new regulations and continue to comply with the existing requirements. If the State expects to grant such exemptions, it must establish an appropriate exemption review mechanism in its nonattainment plan. Exemptions approved by the State must be submitted to EPA as SIP revisions to ensure that every exemption will be drawn as narrowly as possible. EPA will review these exemption requests strictly. An exemption requests may be granted only when the construction or installation of the new equipment can no longer proceed while existing controls remain in operation. No request may be granted, however, if to do so would interfere with the demonstration of reasonable further progress required by the Act.

Enclosed is suggested wording for EPA's FEDERAL REGISTER notices proposing to approve, and approving, State Implementation Plan revisions.

cc: M. Durning
J. Bernstein

Enclosure

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This proposal/final action would/will replace measures in the current SIP with the new measures submitted by the State to EPA for approval. Under this proposal/action, the current emission control regulations applicable to any source would/will remain in effect until such time as the newly revised regulation becomes effective and the source achieves full compliance with its provisions. This provision applies to all revised SIP regulations, not merely those that are subjected to judicial challenge. Failure of the source to satisfy the requirements of the former regulation would/will result in appropriate enforcement actions.