

07/30/1980

VOC330730801

Category: 33 – Definition of VOC

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

July 30, 1980

Office of
General Counsel

MEMORANDUM

SUBJECT: Control of Benzene in Ozone SIPs

FROM: Michael A. James, Associate General Counsel
Air, Noise and Radiation
Division

TO: Walter C. Barber, Director
Office of Air Quality Planning and Standards

This is in regard to your memorandum of July 8, 1980 (attached), recommending to Stephen Wassersug of Region III that EPA require Maryland to regulate benzene in its ozone SIP despite benzene's negligible photochemical reactivity.

Your memorandum implies that EPA has discretion to decide whether or not it wishes to require the states to control benzene emissions in their ozone SIPs. However, EPA does not have any legal authority to require -- or enforce -- controls on benzene emissions as part of a federally approved ozone SIP. Under Section 113(a) EPA may require SIPs to include only those controls which promote the attainment and maintenance of the NAAQS established for designated criteria pollutants. See my memorandum of February 9, 1979, to Regional Counsels and Regional Air Branch Chiefs (attached). In its 1977 policy statement on the control of volatile organic compounds (VOCs) to attain the ozone NAAQS (42 FR 35314, July 8, 1977), EPA stated that benzene is among a group of VOCs which produce only negligible amounts of ozone. Consequently, Section 110 prohibits EPA from requiring or enforcing controls on any of these compounds in a SIP intended to attain and maintain the ozone standards.

As you know, EPA has already acknowledged this limitation on its authority to require control of some of the other substances included in the same list. (See 45 FR 32424 (May 16, 1980) (methyl chloroform and methylene chloride) and 45 FR 48941 (July 22, 1980) (chlorofluorocarbons and fluorocarbons). I cannot see how EPA can support a refusal to make a similar acknowledgment for benzene.

In addition, EPA must make this acknowledgment now. Bethlehem Steel has submitted a comment on EPA's proposed approval of Maryland's Part D ozone SIP

revision requesting EPA to acknowledge that Maryland is not required to control benzene emissions in its ozone SIP. The comment refers to the May 16 notice explaining EPA's lack of authority to require controls on emissions of methyl chloroform and methylene chloride in ozone SIPs. A failure to acknowledge EPA's similar lack of authority to require controls on benzene emissions may frustrate the settlement of Bethlehem Steel's challenge to the existing Maryland ozone SIP (Bethlehem Steel v. EPA, 4th Cir. No. 79-1284) and/or generate new litigation on EPA's final approval of Maryland's Part D revision.

I understand that you feel that an acknowledgment of EPA's lack of authority to require benzene controls under Section 110 would be inconsistent with the current listing of benzene as a hazardous air pollutant under Section 112 (42 FR 29332) and the forthcoming proposal of a NESHAP for coke oven by product facilities which will regulate benzene storage. However, an acknowledgment of benzene's negligible photochemical reactivity and the limitations of EPA's Section 110 authority is not an endorsement of benzene use. EPA could minimize the risk of appearing inconsistent by including in the acknowledgment a discussion of benzene's other adverse health and environmental effects and a description of the proposal EPA is preparing under Section 112. EPA could also recommend that the states control benzene under the authority reserved to them in Section 116.

Accordingly, I recommend that EPA include in its final approval on the Maryland ozone SIP revision a brief statement referring to the two previous policy clarifications on negligibly reactive VOC's and acknowledging that EPA has no authority to require or enforce controls on benzene emissions as part of a federally approved ozone SIP.

Attachments

cc (w/attachments):

Sheldon Novick
Stephen Wassersug

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

DATE: JUL 8 1980

SUBJECT: Classification of Benzene as a VOC

FROM: Walter C. Barber, Director
Office of Air Quality Planning and Standards (MD-10)

TO: Stephen Wassersug, Director
Air and Hazardous Materials Division, Region III

This is in response to your memorandum of June 12, 1980 concerning the classification of benzene as a volatile organic compound (VOC).

Benzene has been listed as a hazardous pollutant as defined in Section 112 of the Clean Air Act as amended (see 42 FR 29332, dated June 8, 1977). At this time, it is our belief that benzene emissions from chemical manufacturing facilities, petroleum refineries, and coke ovens should be reduced and national emission standards are being developed for these industrial categories.

It is prudent to regulate benzene from coke oven by-product recovery plants as Maryland appears to be doing. Also, a "NESHAP" is being prepared by EPA for the coke by-product facilities including the storage of benzene. This "NESHAP" will also provide regulation where the current fixed roof and floating roof CTGs did not apply (i.e., non-petroleum liquid storage).

Benzene has been indicated as having only negligible photochemical reactivity (see policy, 42 FR 39314). However, emissions of benzene are of concern to EPA from a hazardous standpoint; and, as such, it would be inappropriate for EPA to take any action at this time which would encourage uncontrolled emissions of benzene. Accordingly, I suggest that we adhere to the reactivity policy and take no action to exclude benzene at this time.

Please contact G. T. Helms, CPDD (FTS 629-5226), should you have any questions.

bcc: D. Hawkins
T. Kaneen

NOTE: Please see Federal Register, Vol. 42, No. 131, 7/8/77, Part III, Air Quality, "Recommended Policy on Control of Volatile Organic Compounds".

NOTE: Please see Federal Register, Vol. 42, No. 110, 6/8/77, Pages 29332 to 29333.

Attachment

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

February 9, 1979

Office of
General Counsel

MEMORANDUM

SUBJECT: Status of State/Local Air Pollution Control
Measures Not Related to NAAQS

FROM: Michael A. James, Associate General Counsel
Air, Noise and Radiation Division (A-133)

TO: Regional Counsels
Regional Air Branch Chiefs

I want to bring to your attention an issue that I neglected asking Jeff Corer and Larry Novey to mention at the Air Branch Chiefs' Meeting in Atlanta last week. That issue is the status on the SIP of State or local air pollution control measures that are not designed to control national ambient air quality standard (criteria) pollutants or their precursors.

OGC has always advised the Regions that measures to control non-criteria pollutants may not legally be made part of a SIP. Section 110 of the Clean Air Act makes clear that the SIPs have this limitation.¹ This limited scope seems to be pretty well understood and only rarely does a Regional Office include a non-criteria pollutant measure in a SIP approval proposal.

I mention this now because as States submit their major SIP revisions to meet the new requirements of Part D and other provisions of the 1977 Amendments, they may not always differentiate between their regulations to control criteria pollutants and their air pollution control regulations in general. The Regional Office should differentiate if the State does not. The usual practice is that the Region notes in the proposed approval/disapproval preamble that EPA is not taking any action on an identified non-criteria pollutant measure because it cannot legally be part of the SIP.

Regulations for controlling odors, fluorides,² and arsenic are some of the non-criteria pollutant measures that have been included in State submissions for EPA approval. Visible emissions regulations are, to my

¹ Measures that are not part of the approved SIP may not be enforced by EPA.

² State fluoride regulations covering certain source categories are subject to EPA approval under S 111(d), but not as parts of SIPs.

knowledge, always considered SIP measures and are required for many source categories by 40 CFR 51.19(c). If you have any questions about whether a particular emission limitation may be included in the SIP, please contact OAQPS staff on technical issues, and my staff on legal questions.

cc: Dick Rhoads
Steve Kuhrtz