



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

June 26, 1991

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MEMORANDUM

SUBJECT: Delegation of Authority of Finding of Failure to Submit Corrections for Reasonably Available Control Technology as Required by Section 182(a)(2)(A) of the Clean Air Act

FROM: John S. Seitz, Director
Office of Air Quality Planning and Standards (MD-10)

TO: Kathryn Petrucelli, Director
Management and Organization Division (PM-213)

THRU: Michael H. Shapiro
Deputy Assistant Administrator for Air and Radiation (ANR-443)

BACKGROUND

Under section 182(a)(2)(A) of the Clean Air Act (Act), as amended, each State containing an area designated nonattainment for ozone by operation of law on the date of enactment [section 107(d)(1)©], and classified pursuant to section 181(a) was required to submit reasonably available control technology (RACT) corrections by May 15, 1991. These States were to correct or add requirements in the State implementation plan concerning RACT as required by preamended section 172(b), and as interpreted in guidance issued by the Administrator pursuant to the preamended Act. The State was required to do these corrections only for areas that were designated nonattainment for ozone immediately before enactment of the Clean Air Act Amendments of 1990 and, therefore, were designated nonattainment for ozone by operation of law [section 107(d)(1)©] upon enactment.

Under section 179(a) and (b), the Administrator may impose sanctions upon an area for, among other things, failing to submit a plan or plan element required under Part D of Title I of the Act. The Administrator is granted the authority to make a finding of failure to submit. Such a finding triggers an 18-month time clock for the mandatory imposition of at least one sanction. However, the State may stop the time clock by making the required submittal during the 18-month period.

As of May 15, 1991, thirteen States and the District of Columbia had not made one or more of the required submittals under section 182(a)(2)(A). Two of the States made submittals after May 15, 1991, but before any formal notice of failure to make a submittal from the Region. In early June, the Regional Administrators for the Regions in which those jurisdictions are located sent a letter to the remaining 11 States and the District of Columbia, purporting to make a finding of failure to make a required submittal. Since these letters have already been sent, we have drafted a delegation of authority that will affirm that the Regional Administrators had the authority to make this finding on behalf of the Administrator.

ACTION

We are requesting that the Administrator delegate to the Regional Administrators and the Assistant Administrator for Air and Radiation, the authority to make the finding of failure to submit a required plan element pursuant to section 182(a)(2)(A) of the Clean Air Act at any time after June 1, 1991, and in accordance with section 179(a)(1) of the amended Act. See attached proposed delegation. Because letters making the findings have already been sent, we are operating under a tight time frame in which to get the requested delegation in place. Hence, we are requesting that this delegation be subject to expedited Green Border review. Furthermore, we are requesting that the signature document authorizing this delegation have two dates: an "effective date" of June 1, 1991 and the approval date reflecting the date the Administrator signs the delegation. The purpose of the first date would be to ratify or affirm the actions already taken, consistent with the date these findings were made by the Regional Administrators. If you have any questions regarding the proposed delegation, please contact Laurel Schultz at FTS 629-5511.

Thank you for your assistance in this matter.

Attachment

cc: Alan W. Eckert, OGC
Prudence J. Goforth, OARM

bcc: Laurel Schultz
Jan Tierney, OGC

"This was coordinated with Jan Tierney of OGC, who drafted most of this memorandum.

Attachment

CLEAN AIR ACT

Findings of Failure to Submit RACT Corrections Pursuant to Section 182(a)(2)(A) for State Implementation Plans for Ozone Nonattainment Areas

1. **AUTHORITY.** To make a finding, at any time after June 1, 1991, and in accordance with section 179(a)(1) of the Clean Air Act, that a State has failed to submit a plan or plan element in which the State made RACT corrections in accordance with section 182(a)(2)(A) of the Clean Air Act.

2. **TO WHOM DELEGATED.** The Regional Administrators and the Assistant Administrator for Air and Radiation.

3. **REDELEGATION AUTHORITY.** This authority may not be redelegated.

4. **ADDITIONAL REFERENCES.**

a. Section 179(a)(1) of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399, 2420.

b. Section 182(a)(2)(A) of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399, 2426.

c. Section 301(a)(1) of the Clean Air Act, 42 U.S.C. 7601(a)(1), as amended by section 108(I) of the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399, 2467.