



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

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OFFICE OF  
AIR AND RADIATION

Mr. David Hawkins  
Senior Attorney  
Natural Resources Defense Council  
1350 New York Avenue, N.W.  
Washington D.C. 20005

Dear Mr. Hawkins:

This is in response to your June 12, 1992 letter to William Reilly, Administrator of the Environmental Protection Agency (EPA), expressing your concerns about the use of conditional approval of certain State implementation plan (SIP) revisions. Specifically, you objected to the use of conditional approval of commitments for SIP revisions covering reasonably available control technology (RACT) on major sources of oxides of nitrogen (NO<sub>x</sub>), inspection and maintenance (I/M) programs, and transportation control measures (TCM's) to offset growth in emissions from growth in vehicle miles traveled (VMT).

You expressed in your letter that such use of the conditional approval process was an illegal attempt by EPA to offer deadline extensions to States. You defined proper use of the conditional approval to be those cases in which a State has made a complete submission which falls short in some detail.

The EPA believes that the new section 110(k)(4) does allow the use of conditional approval of a commitment to develop specific measures, and that our proposed use of conditional approvals is appropriate. However, EPA also believes that, although section 110(k)(4) provides such broad authority, the use of this provision should be constrained to certain limited circumstances that merit special consideration.

Section 110(k)(4) provides that EPA "may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision." The EPA interprets this provision to grant EPA authority to approve a plan revision that is submitted in the form of a commitment. Associated with that discretion, however, are strict limits on the length of time before which the State must meet its commitment and the consequences for the State if it fails to do so. The commitment may extend, at a maximum, 1 year past the time of EPA's conditional approval; the EPA may choose to approve a shorter period for the commitment. For example, in the General Preamble and in the proposed rule on I/M programs, EPA does provide a shorter period for the I/M State submittal (57 FR 13514, April 16, 1992; 57 FR 31079, July 13, 1992). Furthermore, if the State fails to meet the commitment within the applicable period, the conditional approval will convert to a disapproval, starting the sanctions clock under section 179(a).

The EPA believes that it should use the discretion granted under section 110(k)(4) only in circumstances that merit special consideration. In many instances, this determination will be made on a case-by-case basis for each submitted SIP or SIP revision. However, at times, the Agency may determine prior to a submittal date that such special circumstances should allow use of the conditional approval on a much broader basis. As explained below, EPA believes that such circumstances may exist in at least three situations.

The EPA has not made a final decision whether, in certain circumstances, commitments to develop and adopt NOx RACT rules may be acceptable for conditional approval. While rules covering NOx RACT are due November 15, 1992, the conflicting NOx regulation time frames in the Act present a difficult policy choice. For example, the required photochemical grid modeling which would show whether NOx control is beneficial in attaining the ozone national ambient air quality standard cannot realistically be done in most areas until after November 15, 1992. Requiring such ozone nonattainment areas to adopt NOx RACT prior to completion of this modeling is inconsistent with the statutory intent of affording these States the opportunity to complete the technical showing of whether these areas qualify for an exemption under section 182(f).

The EPA believes it is appropriate to conditionally approve commitments to develop I/M programs since EPA was unable to issue the rules governing this program by the mandated deadline. It is EPA's opinion that State rules submitted in light of the proposed I/M rule will be more stringent and more enforceable than if EPA had required that the States submit fully adopted I/M programs by the mandated deadline without the benefit of EPA's rules.

Finally, section 182(d)(1)(A) states that each SIP must contain TCM's to offset growth in emissions due to growth in VMT, and such measures, in combination with other emissions reduction requirements of the Clean Air Act, must be sufficient to allow total area emissions to comply with reasonable further progress (RFP) and attainment requirements. The RFP and attainment demonstrations are not due until November 15, 1994. Thus, EPA believes conditional approval of a commitment to develop TCM's is appropriate to allow States time to develop these demonstrations in concert with their attainment and RFP demonstrations. The States will then be able to develop TCM's which comply with these demonstrations.

The EPA believes that the SIP revisions for I/M programs and TCM's do constitute reasonable applications of the conditional approval provision. In addition, EPA believes that conditional approval may be an appropriate process for NOx RACT rules due on November 15, 1992. I appreciate this opportunity to be of service and trust that this information will be helpful to you.

Sincerely,

William G. Rosenberg  
Assistant Administrator  
for Air and Radiation

cc: David Driesen  
Simi Batra

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