

8/23/93

MEMORANDUM

SUBJECT: Guidance on Issues Related to 15 Percent Rate-of-Progress Plans

FROM: Michael H. Shapiro
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TO: Director, Air Pesticides and Toxics
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Region II
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As you know, section 182(b)(1) of the Clean Air Act (Act) requires States to submit, by November 15, 1993 for all ozone nonattainment areas classified as moderate and above, a State implementation plan (SIP) that provides for a 15 percent reduction in emissions of volatile organic compounds (VOC) by November 15, 1996. The purpose of this memorandum is to provide guidance related to these SIP submissions.

Committal SIP's for 15 Percent Plan Control Measures

Several States asked to what extent will the Environmental Protection Agency (EPA) accept committal SIP's for the measures necessary to achieve the 15 percent reduction. Under section 110(k)(4) of the Act, EPA has the authority to conditionally approve a SIP submittal based on a commitment by the State to adopt specific enforceable measures by a date certain. A previous memorandum identified specific cases in which EPA would accept commitments for submittals which were due by November 15, 1992. For the 15 percent rate-of-progress plans, EPA will not accept commitments to adopt the measures needed to meet the 15 percent reduction requirement and any such plans would not be considered approvable. In fact, EPA may

determine such submittals to be incomplete, which would trigger a findings letter starting the clock for mandatory sanctions. The only exception would be for the State of Texas where EPA Headquarters, based on initial views at the time, indicated a commitment would be acceptable.

NOx Substitution for Contingency Measures

Section 172(c)(9) of the Act requires moderate and above ozone nonattainment areas to adopt contingency measures by November 15, 1993. These measures would have to be implemented if the area fails to make reasonable further progress (RFP) or to attain the national ambient air quality standards (NAAQS) by the applicable attainment date. In addition, section 182(c)(9) of the Act requires serious and above areas to adopt contingency measures which would be implemented if the area fails to meet any applicable milestone. When triggered, the contingency measures must be implemented without further action by the State or the EPA.

The "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992) requires that the contingency measures generally must provide reductions of 3 percent of the emissions from the adjusted base year inventory. The reductions must be achieved in the year following that in which the failure has been identified. Three percent represents 1 year's worth of reductions under the post-1996 rate-of-progress requirement.

The contingency measures that are required to be adopted by November 15, 1993 are for both failure to achieve RFP and failure to attain. While the contingency measures to address failure to achieve RFP must be for VOC, the contingency measures for failure to attain may be for VOC and/or NOx. Since these measures will be implemented after 1996, and because these measures serve two purposes (i.e., failure to achieve RFP and failure to attain), the contingency measures could provide for less than 3 percent in VOC reductions as long as some of the measures are for VOC and the area would have the difference (up to 3 percent) in NOx reductions. Based on discussions with EPA's Office of General Counsel, we have determined that States must adopt a minimum of 0.3 percent in VOC measures of the 3 percent contingency measure requirement to be legally defensible. Therefore, in an area that has demonstrated that NOx controls are needed for attainment, 2.7 percent of the required 3 percent could be NOx contingency measures; at least 0.3 percent must still be VOC to cover the contingency requirement for meeting RFP. Note that this applies to moderate areas as well; moderate areas must submit an approvable plan that shows how they will achieve the 15 percent requirement but are not required to submit a demonstration that the milestone was achieved. Moderate areas, of course, must demonstrate that they have attained the NAAQS for ozone by November 15, 1996.

In order for NOx contingency measures to be acceptable, the State must adhere to EPA's forthcoming guidance on NOx substitution. In addition, States must show with modeling evidence that NOx reductions are needed in a particular nonattainment area. Therefore, in order to give States enough time to consult EPA's guidance on NOx substitution and to determine if NOx reductions are needed, EPA will accept committals for contingency measures that are due November 15, 1993. If the contingency measures themselves are not included with the November 15, 1993 submittal, that submittal must include a commitment, with schedule, for contingency measures to be adopted by November 15, 1994.

We believe that this is acceptable due to the fact that the earliest a contingency measure would be implemented would be in 1997. The first attainment date and milestone date for areas that are required to adopt contingency measures is November 15, 1996. The EPA will expect all actions needed to make the measures fully effective to occur within 60 days after EPA notifies the State of its milestone failure or within 6 months of its attainment failure. Therefore, the State would not need to implement the contingency measures until 1997 and EPA could accept measures that could not be implemented until 1997.

Upon activation of the contingency measures, reductions of up to 3 percent (or such lesser percentage that will cure the identified failure) must be achieved 1 year following the date on which the failure had been identified. The State must achieve these reductions while conducting additional control measure development and implementation as necessary to correct the shortfall if it is beyond the 3 percent the State would have already adopted. In determining what measures should be implemented if less than 3 percent reduction is needed to cure the failure, all VOC contingency measures should be required first followed by the appropriate percentage of NO_x measures that will correct the shortfall.

15 Percent Waiver Provision

Under section 182(b)(1)(A)(ii), areas can submit plans demonstrating less than a 15 percent emission reduction if the following conditions are met. First, the State must demonstrate that the area has a new source review program equivalent to the requirement in extreme areas [section 182(e)], except that a "major source" must include any source that emits, or has the potential to emit, 5 tons per year (tpy) of VOC. Second, all major sources (down to those with emissions of 5 tpy of VOC or greater) in the area must be required to have RACT-level controls. Third, the State must demonstrate that the SIP includes all measures (both stationary and mobile) that are achieved in practice by sources in the same source category in nonattainment areas of the next higher classification. Fourth, the plan must include all measures that can be feasibly implemented in the area, in light of technological achievability and cost.

If an area chooses to meet the requirements of section 182(b)(1)(A)(ii) to get a waiver of the 15 percent provision, EPA interprets title V to require operating permits for all VOC sources in that area that emit or have the potential to emit 5 tpy of VOC. This is because the definition of "major source" in title V expressly refers to "major stationary source" as defined in part D of title I. Since, under the waiver provision, "major stationary source" would be defined as having the potential to emit 5 tpy for the purposes of title I, this would become the definition of major source for the purposes of title V.

I suggest that you provide a copy of this memo to your affected State and local agencies. Inquiries may be directed to John Silvasi at (919) 541-5666.