

Dated 12/14/00

MEMORANDUM

SUBJECT: Additional Submission on RACM from States with Severe 1-hour Ozone Nonattainment Area SIPs

FROM: Mr. John S. Seitz, Director
Office of Air Quality Planning and Standards

Ms. Margo Oge, Director
Office of Transportation and Air Quality

TO: Regional Air Division Directors, Regions I, II, III, V and VI

SUMMARY

In order for States to demonstrate attainment of a national ambient air quality standard (NAAQS), EPA's long-standing policy has been that States must address whether there are reasonably available control measures (RACM) that may advance the attainment date. In December 1999, EPA proposed action on 1-hour ozone attainment demonstration SIPs submitted by 14 States for 10 serious and severe 1-hour ozone nonattainment areas. The purpose of this memorandum is to ask the Regions to work with their States that have severe ozone nonattainment areas to ensure that the State's current submission (or a revised submission) meets the Clean Air Act requirement that areas attain the NAAQS as expeditiously as practicable, including consideration of the availability of RACM that may advance the attainment date. Attachment 1 provides background on this issue and guidance.

ACTION

There are several actions that need to be taken for severe areas, that are described below. It is important to remember that failure to address this issue could result in disapproval of the attainment demonstration SIPs for areas within the State. Under the terms of a recent consent decree, EPA would be obligated to propose by October 15, 2001 and promulgate by June 14, 2002 attainment demonstration Federal Implementation Plans (FIPs) if EPA has not fully approved attainment demonstration SIPs by the relevant dates.

First, the Regional Offices should inform each State as soon as possible that comments have been raised regarding RACM. Second, the Region should work with their States to develop a supplement to the docket and/or a SIP revision that addresses whether TCMs and other possible stationary measures are RACM.¹

The EPA believes that the docket should be supplemented no later than May 31, 2001. At that time, EPA will issue a supplemental notice of proposed rulemaking, providing the public with an opportunity to comment before EPA would be required to fully approve the SIP or propose a FIP in October 2001.

Existing EPA guidance provides some help in identifying the type of measures that might be considered. For example, the General Preamble contains a discussion of the relationship between the RACM requirement of section 172(c)(1) and the list of TCMs in section 108(f) (see Attachment 2). The thrust of this guidance is that section 108(f) TCMs are not presumptively RACM, but these should be considered in assessing whether they have applied RACM. Also, the General Preamble states:

. . . any measure that a commenter indicates during a public comment period is reasonably available for a given area should be closely reviewed by the planning agency to determine if it is in fact reasonably available for implementation in the area in light of local circumstances.

Comments on the EPA proposed rulemaking on all of these SIPs included a list of measures that the commenter believes should be considered RACM; the relevant portions of one of these comments appears in Attachment 3. The General Preamble also contains a citation to an EPA-generated list of TCMs other than those in section 108(f). Our proposals in December included a document containing a list of measures to be considered by States needing additional measures to cover a shortfall.

The Regional Offices should make clear that States need to give serious consideration to additional measures that might be reasonably available and advance the attainment date.

It is important for the Regional Offices to support and work closely with the States as they address this issue. Our staff will be available to provide any necessary assistance. Additionally, the environmental organizations that raised this comment have indicated that they are willing to assist the States in their efforts and other stakeholders may also be willing to provide assistance.

Questions on this memorandum may be directed to John Silvasi of OAQPS at 919-541-5666 or Mark Simons of OTAQ at 734-214-4025.

¹ For purposes of the attainment demonstration SIPs, measures could be justified as not meeting RACM if a measure (a) is not technologically or economically feasible, or (b) does not advance the attainment date for the area.

Attachments

cc: Regional Air Division Directors, Regions IV, VII, VIII, IX, X, John Silvasi, Denise Gerth, Rich Ossiias, Kevin McLean, Jan Tierney, Sara Schneeberg, Tom Helms, Sharon Reinders, Meg Patulski, Laura Berry, M. Simons, M. Zaw-Mon

Bcc via email: Dave Conroy, Bob Judge, Bill Baker, Ray. Werner, Rudy Kapichak, Paul Truchan, Marcia Spink, Dave Arnold, Chris Cripps, Kay Prince, Karen Borel, Ed Doty, Jay Bortzer, Tom Diggs, Guy Donaldson

EPA/OAR/OAQPS/AQSSD/OPSG/JSILVASI\LLassiter: NCM Rm 510A:(MD-15) 1-5526

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November 14, 2000/Rev. December 7,
2000/Rev. December 13, 2000

ATTACHMENT 1

BACKGROUND ON RACM REQUIREMENT ISSUE

During the comment period on the 1-hour attainment demonstrations and, in some instances, the separate comment period on the adequacy of the SIP for purposes of conformity, comments were received that questioned whether the States considered RACM. In general, the comments claimed that EPA cannot find the emissions budgets associated with the attainment demonstrations to be adequate because the attainment demonstrations are not approvable, in part because the SIP does not contain all RACM. The comments specifically focused on the failure of the SIPs to address transportation control measures (TCMs) that are RACM, but the comment was directed to stationary source measures as well. In light of EPA's existing guidance, the comments contend that RACM is necessary to ensure that the attainment date is "as expeditious as practicable," and therefore EPA cannot approve an attainment date—and its associated attainment demonstration—without having all RACM in the SIP. The comments also pointed out that some candidate TCMs have been included in transportation improvement programs (TIPs)—but not in the SIP—and the comments claim that at a minimum such measures are reasonably available and should be in the SIP.

The EPA policy stated in the General Preamble, 57 FR13498 at 13560 (Apr. 16, 1992) (which interpreted the court's decision in the *Delaney* case, 898 F.2d 687 (9th Cir.)), is that States must consider available control measures, adopt such measures as are reasonably available, and provide a justification why measures that may be available were not considered RACM and adopted in the SIP (see Attachment 2). The EPA reconfirmed that policy in a November 30, 1999 policy memorandum from John Seitz that reiterates the statutory requirement for States to adopt as part of their attainment demonstrations all RACM necessary to advance the area's attainment date.² The memo further provides:

In order for the EPA to determine whether a State has adopted all RACM necessary for attainment as expeditiously as practicable, *the State will need to provide a justification as to why measures within the arena of potentially reasonable measures have not been adopted.* The justification would need to support that a measure was not "reasonably

²Memorandum, "Guidance to Clarify EPA's Policy on What Constitutes 'As Expeditiously as Practicable' for Purposes of Attaining the One-Hour Ozone Standard for Serious and Severe Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 1999.

available” for that area and could be based on technological or economic grounds. Sources of potentially reasonable measures include measures adopted in other nonattainment areas and measures that the EPA has identified in guidelines or other documents. [Emphasis added]

In response to comments regarding the adequacy of the SIP budgets for purposes of conformity, EPA provided that “as long as EPA is fairly certain that the attainment demonstration will result in attainment consistent with the statutory requirement of attainment as expeditiously as practicable, but no later than certain prescribed dates, EPA can find the motor vehicle emission budget adequate.”

However, for purposes of fully evaluating the approvability of the attainment demonstrations, EPA will need to ensure that sufficient evidence exists in the docket for the rulemaking to determine whether there are reasonably available measures that could advance the attainment date. Because we believe that the SIPs for the severe 1-hour ozone nonattainment areas on which EPA proposed action in December do not contain sufficient analysis of RACM, the docket will need to be supplemented to address this issue.

Note that EPA’s guidance provides that even measures that are included in a TIP may possibly be determined to not be RACM if they do not meet the RACM tests outlined in EPA guidance and the Clean Air Act.

ATTACHMENT 2
GENERAL PREAMBLE EXCERPT ON RACM

ATTACHMENT 3
EXCERPTS FROM COMMENT LETTER ON RACM