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December 7, 2007

The Honorable Alan J. Steinberg
Regional Administrator
United States Environmental Protection Agency – Region 2
290 Broadway- 26th Floor
New York, New York 10007-1866

Dear Regional Administrator Steinberg:

This letter transmits proposed revisions of the New Jersey's State Implementation Plan (SIP) for the Attainment and Maintenance of the 8-Hour Ozone and Fine Particulate Matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). Specifically, this proposed SIP revision addresses requirements under 42 U.S.C. § 7410(a)(1) and (2) (Sections 110(a)(1) and (2)) of the Clean Air Act for the 8-hour ozone and PM_{2.5} health standards of 1997 that were not specifically addressed previous SIP revisions. This proposed SIP is also known as the "Infrastructure SIP." Enclosed are proposed SIP revisions that demonstrate New Jersey's compliance with these requirements.

The Section 110(a)(2) elements of the implementation plan are as follows:

- Air Quality Monitoring, Compilation, Data Analysis, and Reporting (§110(a)(2)(B))
- Enforcement and Stationary Source Permitting (§110(a)(2)(C))
- Resources, Conflict of Interest, and Emergency Backstop (§110(a)(2)(E))
- Stationary Source Emissions Monitoring and Reporting (§110(a)(2)(F))
- Emergency Powers and Contingency Plans (§110(a)(2)(G))
- SIP Revision For Revised Air Quality Standards or New Attainment Methods (§110(a)(2)(H))
- SIP Revisions for New Nonattainment Areas (§110(a)(2)(I))
- Consultation and Public Notification (§110(a)(2)(J))
- Air Quality Modeling and Reporting (§110(a)(2)(K))
- Major Stationary Source Permitting Fees (§110(a)(2)(L))
- Consultation with Local Entities (§110(a)(2)(M))

A public hearing is scheduled on New Jersey's proposal on January 28, 2008, at 10:00 a.m. in the New Jersey Department of Environmental Protection's Public Hearing Room at 401 East State Street, Trenton, New Jersey. Written comments relevant to the proposal may be submitted until the close of business on January 31, 2008 to:

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Attn: DEP Docket No. 31-07-12
New Jersey Department of Environmental Protection
P.O. Box 402
401 East State Street
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If you have any questions regarding this proposal, please contact William O'Sullivan, Director of the Division of Air Quality, at (609) 984-1484.

Sincerely yours,



Lisa P. Jackson
Commissioner

Enclosure

c: Nancy Wittenberg, Assistant Commissioner
William O'Sullivan, Director
Ray Werner, USEPA Region 2

**The State of New Jersey
Department of Environmental Protection**

**Proposed
State Implementation Plan Revision
For Meeting the Infrastructure Requirements
in the Clean Air Act**

December 2007

Preface

The State of New Jersey is proposing a State Implementation Plan revision to address the requirements under 42 U.S.C. § 7410(a)(1) and (2) (Section 110(a)(1) and (2) of the Clean Air Act) for the 1997 8-Hour Ozone and Fine Particulate Matter National Ambient Air Quality Standards. The requirements of 42 U.S.C. § 7410(a)(D) (Section 110(a)(2)(D) were addressed by the New Jersey Department of Environmental Protection's Clean Air Interstate Rule State Implementation Plan revision that was approved by the United States Environmental Protection Agency on September 28, 2007. This submission will satisfy the remaining requirements for the "infrastructure" elements under 42 U.S.C. § 7410(a)(1) and (2).

Acknowledgements

The New Jersey Department of Environmental Protection acknowledges the efforts and assistance of the agencies and individuals whose contributions were instrumental in the preparation of this proposed State Implementation Plan revision. In particular, the New Jersey Department of Environmental Protection wishes to acknowledge the individuals within the United States Environmental Protection Agency Region 2 for their assistance on this matter.

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Attachment B – New Jersey Department of Environmental Protection Transport SIP Letter

Executive Summary

The New Jersey Department of Environmental Protection is proposing this State Implementation Plan revision to address the requirements in 42 U.S.C. § 7410(a)(1) and (2) (Section 110(a)(1) and (2) of the federal Clean Air Act) for the 1997 8-Hour Ozone and Fine Particulate Matter National Ambient Air Quality Standards. Sections 110(a)(1) and (2) require states to submit an implementation plan to the United States Environmental Protection Agency Administrator that demonstrates New Jersey's ability and authority to implement, maintain, and enforce the National Ambient Air Quality Standards. Section 110(a)(2) lists the elements that are to comprise the implementation plan.

- Air Quality Monitoring, Compilation, Data Analysis, and Reporting – Section 110(a)(2)(B)
- Enforcement and Stationary Source Permitting – Section 110(a)(2)(C)
- Resources, Conflict of Interest, and Emergency Backstop – Section 110(a)(2)(E)
- Stationary Source Emissions Monitoring and Reporting – Section 110(a)(2)(F)
- Emergency Powers and Contingency Plans – Section 110(a)(2)(G)
- State Implementation Plan Revision For Revised Air Quality Standards or New Attainment Methods – Section 110(a)(2)(H)
- State Implementation Plan Revisions for New Nonattainment Areas – Section 110(a)(2)(I)
- Consultation and Public Notification – Section 110(a)(2)(J)
- Air Quality Modeling and Reporting – Section 110(a)(2)(K)
- Major Stationary Source Permitting Fees – Section 110(a)(2)(L)
- Consultation with Local Entities – Section 110(a)(2)(M)

These elements are sometimes compiled and submitted separately in what is referred to as an "Infrastructure" State Implementation Plan. This document is the Infrastructure State Implementation Plan for the 1997 8-hour ozone and fine particulate matter health standards. Although this is specifically addressing the infrastructure elements for the 1997 standards, it would also be applicable to any future revisions of the National Ambient Air Quality Standards or new standards.

Through this State Implementation Plan revision, the New Jersey Department of Environmental Protection is demonstrating that most of the requirements in Section 110(a)(1) and (2) for the 1997 the 8-Hour Ozone and Fine Particulate Matter National Ambient Air Quality Standards have already been satisfied through past State Implementation Plan revisions or will be satisfied through future State Implementation Plan revisions for fine particulate matter and Regional Haze.

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I. Introduction

Under 42 U.S.C. § 7410(a)(1) and (2) (Section 110(a)(1) and (2) of the federal Clean Air Act), states are required to submit an implementation plan to the United States Environmental Protection Agency Administrator that demonstrates states' ability and authority to implement, maintain, and enforce the National Ambient Air Quality Standards. Section 110(a)(1) provides the timing requirement of implementation plan revisions and Section 110(a)(2) lists the elements that are to comprise the implementation plan.

- Air Quality Monitoring, Compilation, Data Analysis, and Reporting – Section 110(a)(2)(B)
- Enforcement and Stationary Source Permitting – Section 110(a)(2)(C)
- Resources, Conflict of Interest, and Emergency Backstop – Section 110(a)(2)(E)
- Stationary Source Emissions Monitoring and Reporting – Section 110(a)(2)(F)
- Emergency Powers and Contingency Plans – Section 110(a)(2)(G)
- State Implementation Plan Revision For Revised Air Quality Standards or New Attainment Methods – Section 110(a)(2)(H)
- State Implementation Plan Revisions for New Nonattainment Areas – Section 110(a)(2)(I)
- Consultation and Public Notification – Section 110(a)(2)(J)
- Air Quality Modeling and Reporting – Section 110(a)(2)(K)
- Major Stationary Source Permitting Fees – Section 110(a)(2)(L)
- Consultation with Local Entities – Section 110(a)(2)(M)

These elements are sometimes compiled and submitted separately in what is referred to as an “Infrastructure” State Implementation Plan. This document is the Infrastructure State Implementation Plan for the 1997 8-hour ozone and fine particulate matter health standards.

A. Background on Infrastructure Elements of 42 U.S.C. § 7410(a)(1) and (2) (Section 110(a)(1) and (2))

On July 18, 1997, the United States Environmental Protection Agency promulgated new and revised National Ambient Air Quality Standards for ozone and fine particulate matter. For ozone, the United States Environmental Protection Agency revised the National Ambient Air Quality Standard to 0.08 parts per million with an 8-hour averaging period (versus the 0.12 parts per million standard with a 1-hour averaging period for the pre-existing National Ambient Air Quality Standard). The United States Environmental Protection Agency also promulgated a new 24-hour and a new annual National Ambient Air Quality Standard for fine particulate matter (PM_{2.5} or particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers).¹

For every new or revised National Ambient Air Quality Standard, the Clean Air Act requires the States demonstrate the ability to implement, maintain, and enforce that standard.² By federal

¹ See “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards” (October 2, 2007). See Attachment A.

² Under 42 U.S.C. § 7410(a)(1) and (2) (Section 110(a)(1) and (2)), all states are required to submit plans to demonstrate states' ability and authority to implement, maintain, and enforce the 8-hour ozone and fine particulate matter standards. Under Section 110(a)(1) and (2) states are required to address basic state implementation plan

statute, State Implementation Plans meeting the requirements of Section 110(a)(1) and (2) are to be submitted by states within three (3) years after promulgation of a new or revised standard. This being the case, states were required to submit such State Implementation Plans for the 1997 standards to the United States Environmental Protection Agency no later than July 2000. However, intervening litigation over the 1997 8-Hour Ozone and Fine Particulate Matter National Ambient Air Quality Standard, created uncertainty about how to proceed and, to date, states have not submitted State Implementation Plans to meet the basic or infrastructure requirements enumerated in Section 110(a)(1) and (2).

In March of 2004, Earth Justice initiated a lawsuit against the United States Environmental Protection Agency for failure to take action against states that had not made revisions to their State Implementation Plans to meet the requirement of Section 110(a)(1) and (2), i.e., failure to make a “finding of failure to submit.” On March 10, 2005, the United States Environmental Protection Agency entered into a Consent Decree with Earth Justice that obligated the United States Environmental Protection Agency to make official findings whether states had made required implementation plan submissions by dates certain. The Consent Decree obligated the United States Environmental Protection Agency to determine whether states have made State Implementation Plan submissions required to meet Section 110(a)(1) and (2) related to interstate transport by no later than March 15, 2005. The Consent Decree also obligates the United States Environmental Protection Agency to make a determination whether states have made submissions necessary to meet the remaining requirements under Section 110(a)(1) and (2) by December 15, 2007, for the 8-Hour Ozone National Ambient Air Quality Standard, and by October 5, 2008, for the Fine Particulate Matter National Ambient Air Quality Standard.³ It should be noted that the latter determinations pertain only to whether the submissions are complete, pursuant to Section 110(k)(1)(A), and do not constitute United States Environmental Protection Agency approval or disapproval of such submissions. In addition, the determinations required by the Consent Decree explicitly exclude any determinations regarding: (i) submissions required by Section 110(a)(2)(C) to the extent that subsection pertains to a nonattainment area new source review permit program in Part D Title I of the Clean Air Act; and (ii) submissions required by Section 110(a)(2)(I) for Part D Title I nonattainment area plans.

In accordance with the Consent Decree, the United States Environmental Protection Agency published a finding that all fifty states failed to submit revisions to their State Implementation Plans addressing interstate transport for the 8-Hour Ozone and Fine Particulate Matter National Ambient Air Quality Standards, as required by Section 110(a)(2)(D)(i) of the federal Clean Air Act.⁴ That finding initiated a two-year deadline for the promulgation of a Federal Implementation Plan by the United States Environmental Protection Agency for each such state unless, prior to that time, each state made a submission to meet the requirements of Section 110(a)(2)(D)(i) and the United States Environmental Protection Agency approved such submission.

requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.

³ See “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards” (October 2, 2007). See Attachment A.

⁴ 70 Fed. Reg. 21147 (April 25, 2005).

On May 12, 2005, the United States Environmental Protection Agency published the Clean Air Interstate Rule which identified the degree to which emissions of sulfur dioxide and oxides of nitrogen in certain states significantly contribute to nonattainment of, or interfere with maintenance of, the 1997 8-Hour Ozone and Fine Particulate Matter National Ambient Air Quality Standards in downwind states, and the reductions that must be achieved in those states to eliminate such contributions.

On August 15, 2006, the United States Environmental Protection Agency issued guidance entitled "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Sections 110(a)(2)(D)(i) for the 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards." This guidance indicated that states within the Clean Air Interstate Rule region, which includes New Jersey, could satisfy the requirements under Section 110(a)(2)(D) by satisfying the requirements of the Clean Air Interstate Rule, and addressed what other states that are outside of the Clean Air Interstate Rule region should consider doing to meet the "significant contribution" and "interfere with maintenance" requirements of Section 110(a)(2)(D)(i) for the 1997 standards. This guidance also addressed what all fifty states should consider in making State Implementation Plan submissions to meet the "prevention of significant deterioration" and "protect visibility" requirements of Section 110(a)(2)(D)(i). New Jersey fulfilled the interstate transport requirements of Section 110(a)(2)(D)(i) through 1) a letter sent to the United States Environmental Protection Agency Regional Administrator on December 22, 2006 stating our intention to submit an abbreviated Clean Air Interstate Rule State Implementation Plan but that the Clean Air Interstate Rule State Implementation Plan was not enough to address our interstate transport concerns (Attachment B); and 2) the submission of a Clean Air Interstate Rule State Implementation Plan to the United States Environmental Protection Agency on June 26, 2007 that was subsequently approved on September 28, 2007.

On October 2, 2007, the United States Environmental Protection Agency issued guidance entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards." The New Jersey Department of Environmental Protection is addressing in this submittal the infrastructure requirements under Section 110(a)(1) and (2) pursuant this guidance.

II. 42 U.S.C. § 7410(a)(1) (Section 110(a)(1))

42 U.S.C. § 7410(a)(1) addresses the timing requirement of the submissions of State Implementation Plan revisions. By submitting this Infrastructure State Implementation Plan to the United States Environmental Protection Agency, the New Jersey Department of Environmental Protection will have satisfied the timing requirement under the Consent Decree, which is December 15, 2007 for the 8-hour ozone health standard and October 5, 2008 for the fine particulate matter health standard.

III. Infrastructure Elements of the Clean Air Act Under 42 U.S.C. § 7410(a)(2) (Section 110(a)(2))

The infrastructure elements of the Clean Air Act included in this proposed State Implementation Plan revision are listed below.

- Air Quality Monitoring, Compilation, Data Analysis, and Reporting – Section 110(a)(2)(B)
- Enforcement and Stationary Source Permitting – Section 110(a)(2)(C)
- Resources, Conflict of Interest, and Emergency Backstop – Section 110(a)(2)(E)
- Stationary Source Emissions Monitoring and Reporting – Section 110(a)(2)(F)
- Emergency Powers and Contingency Plans – Section 110(a)(2)(G)
- State Implementation Plan Revision For Revised Air Quality Standards or New Attainment Methods – Section 110(a)(2)(H)
- State Implementation Plan Revisions for New Nonattainment Areas – Section 110(a)(2)(I)
- Consultation and Public Notification – Section 110(a)(2)(J)
- Air Quality Modeling and Reporting – Section 110(a)(2)(K)
- Major Stationary Source Permitting Fees – Section 110(a)(2)(L)
- Consultation with Local Entities – Section 110(a)(2)(M)

Two elements under Section 110(a)(2) are not included in this Infrastructure State Implementation Plan. These are the emissions limit element under Section 110(a)(2)(A) and the interstate transport element under Section 110(a)(2)(D). Section 110(a)(2)(A) is not part of the Infrastructure State Implementation Plan because the timing requirement is dependent on another section of the Clean Air Act and not subject to the Consent Decree. Also, as explained in the Background section, New Jersey has already satisfied the requirements under Section 110(a)(2)(D) by submitting a Clean Air Interstate Rule SIP revision that was approved by the United States Environmental Protection Agency on September 28, 2007. In the Clean Air Interstate Rule State Implementation Plan revision, the New Jersey Department of Environmental Protection stressed to the United States Environmental Protection Agency that the federal Clean Air Interstate Rule does not adequately address interstate transport and more regional emissions reductions are needed in order for nonattainment areas to come into attainment.

The following discussions respond to the infrastructure elements required under Section 110(a)(2) for the 8-hour ozone and fine particulate matter health standards of 1997.

A. Air Quality Monitoring, Compilation, Data Analysis, and Reporting – 42 U.S.C. § 7410(a)(2)(B) (Section 110(a)(2)(B))

States are required to establish and operate devices, methods, systems, and procedures to monitor, compile, and analyze ambient air quality data and to provide the data to the United States Environmental Protection Agency.

The New Jersey Department of Environmental Protection's ambient air monitoring program is required by the State's Air Pollution Control Act (N.J.S.A. 26:2C-9.a.) and the federal Clean Air Act. New Jersey has an extensive air quality monitoring network that collects air quality data

that are compiled, analyzed, and reported to the United States Environmental Protection Agency. The New Jersey Department of Environmental Protection's website contains up-to-date information about air quality monitoring, including a description of the network and information about monitoring of ozone and fine particulate matter. See <http://www.nj.gov/dep/airmon/index.html> with links to all elements of the program. New Jersey commits to retaining, and continuing to operate its monitoring network, subject to a joint annual review process by both the New Jersey Department of Environmental Protection and the United States Environmental Protection Agency.

B. Enforcement and Stationary Source Permitting – 42 U.S.C. § 7410(a)(2)(C) (Section 110(a)(2)(C))

States are required to implement a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet prevention of significant deterioration and nonattainment area new source review requirements.

The New Jersey Department of Environmental Protection's enforcement of control measures and the air permitting program for stationary sources are governed by the State's Air Pollution Control Act (N.J.S.A. 26:2C-19). The New Jersey Department of Environmental Protection's enforcement and permitting programs operate under regulations designated in N.J.A.C. 7:27 and N.J.A.C. 7:27A. In the recently submitted 8-Hour Ozone Reasonably Available Control Technology State Implementation Plan, the New Jersey Department of Environmental Protection discussed future rulemaking under N.J.A.C. 7:27 to control volatile organic compounds and oxides of nitrogen for the attainment of the 8-hour ozone health standard. For fine particulate matter, the New Jersey Department of Environmental Protection is preparing a fine particulate matter attainment demonstration that will include a reasonably available control technology analysis for stationary sources and a plan for attainment and maintenance of the fine particulate matter health standard. The fine particulate matter attainment demonstration is due to the United States Environmental Protection Agency by April 2008.

C. Resources, Conflict of Interest, and Emergency Backstop – 42 U.S.C. § 7410(a)(2)(E) (Section 110 (a)(2)(E))

States are required to provide assurances that (i) adequate personnel, funding, and legal authority will be available to carry out the State Implementation Plan; (ii) a majority of its state board members represent the public interest and do not derive a significant portion of their income from entities that are subject to permits, and that conflicts of interest of members be adequately disclosed; and (iii) the State has responsibility for ensuring adequate implementation of plan provisions to be carried out by local districts.

New Jersey's statute under N.J.S.A. 13:1D-9 provides guidance on dedicating personnel and funds for the New Jersey Department of Environmental Protection to carry out the responsibilities under the State Implementation Plan. The New Jersey Department of Environmental Protection relies on the federal grant allocated under Section 103 and 105 of the

Clean Air Act for carrying out the State Implementation Plan responsibilities, as well as an annual State appropriation.

The New Jersey Department of Environmental Protection is the only entity that approves permits and enforcement orders in New Jersey. There is no board that carries out these duties. New Jersey has established the Clean Air Council as required in the Air Pollution Control Act. This Council is comprised of representatives from government, industry, and the public advocate groups. The Council makes recommendations to the Commissioner of the New Jersey Department of Environmental Protection on air pollution issues.

All 21 counties have a contract and/or grant with the New Jersey Department of Environmental Protection in which they are delegated authority to enforce various regulations under the County Environmental Health Act. The County Environmental Health Act allows the delegated counties to act as the Department's representatives during investigations and can issued enforcement actions, assess and collect penalties, and settle cases. The Air Pollution Control Act (N.J.S.A. 26:2C-22) includes provisions for the relation of local ordinances or regulations to State law.

D. Stationary Source Emissions Monitoring and Reporting – 42 U.S.C. § 7410(a)(2)(F) (Section 110(a)(2)(F))

States are to require the installation, maintenance, and replacement of equipment to monitor stationary sources of emissions by the owners or operators of these sources and the provision of periodic reports on these emissions.

The State's Air Pollution Control Act (N.J.S.A. 26:2C-9.2) gives the New Jersey Department of Environmental Protection the authority to require emissions monitoring for stationary sources. The New Jersey Department of Environmental Protection has adopted regulations to implement the federal requirements for stationary source emissions monitoring and reporting in N.J.A.C 7:27-8 and 22.

E. Emergency Powers and Contingency Plans – 42 U.S.C. § 7410(a)(2)(G) (Section 110(a)(2)(G))

States are to provide for authority comparable to that in Section 303 of the Clean Air Act, which provides legal authority to halt the emission of air pollutants causing or contributing to injury to public or welfare. In addition, states are to provide for adequate contingency plans to implement such authority.

This authority is provided in New Jersey's Air Pollution Emergency Control Act (N.J.S.A. 26:2C-26 et seq.), which is implemented through N.J.A.C. 7:27-12. Contingency plans are included in each of New Jersey's State Implementation Plan revisions, which have all been approved by the United States Environmental Protection Agency.

F. State Implementation Plan Revision For Revised Air Quality Standards or New Attainment Methods – 42 U.S.C. § 7410(a)(2)(H) (Section 110(a)(2)(H))

States are required to provide for revision of State Implementation Plan from time to time when air quality standards are revised or new attainment methods become available or when the United States Environmental Protection Agency informs states that current State Implementation Plans are inadequate to attain standards or to comply with additional requirements under the Clean Air Act.

New Jersey's statute under N.J.S.A. 13:1D-9 gives the New Jersey Department of Environmental Protection the authority to revise the State Implementation Plan in response to changes in the National Ambient Air Quality Standards, availability of improved methods for attaining the National Ambient Air Quality Standards, or in response to an United States Environmental Protection Agency finding that the State Implementation Plan is substantially inadequate. For example, the New Jersey Department of Environmental Protection submitted a final attainment demonstration State Implementation Plan to the United States Environmental Protection Agency on October 29, 2007 for the 8-hour ozone standard and will be submitting an attainment demonstration State Implementation Plan for fine particulate matter by April 2008.

G. State Implementation Plan Revisions for New Nonattainment Areas – 42 U.S.C. § 7410(a)(2)(I) (Section 110(a)(2)(I))

States are required to submit State Implementation Plan revisions for newly designated nonattainment areas to meet the requirements of Part D - Plan Requirements for Nonattainment Areas under Clean Air Act Title I - Air Pollution Prevention and Control. Part D of the Clean Air Act specifies both general requirements for all State Implementation Plans and specific requirements for different criteria pollutants.

The New Jersey Department of Environmental Protection has in the past submitted State Implementation Plan revisions for any change in the National Ambient Air Quality Standards, including the recommendations for nonattainment area designation.

H. Consultation and Public Notification – 42 U.S.C. § 7410(a)(2)(J) (Section 110(a)(2)(J))

States are required to meet the applicable requirements of Clean Air Act Section 121 (relating to consultation), Section 127 (relating to public notification), and Part C (relating to prevention of significant deterioration of air quality and visibility protection).

Clean Air Act Section 121 requires that states provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments, and any affected federal land manager in carrying out the Clean Air Act requirements. The New Jersey Department of Environmental Protection provides the opportunity to everyone in New Jersey to participate in the public comment period and public hearing for any rulemaking and State Implementation Plan proposal, as described below in §110(a)(2)(M). Another avenue of consultation with the public and the regulated community is

through workshops. In preparation for State Implementation Plan revisions for 8-hour ozone and fine particulate matter, the New Jersey Department of Environmental Protection consulted with representatives of civic, environmental, and industrial groups, as well as other interested parties through the ongoing Reducing Air Pollution Together Initiative that began with a workshop on June 29, 2005 and the formation of the six air quality workgroups. The public has had an opportunity to provide feedback on the workshop and on white papers on various control options drafted by the New Jersey Department of Environmental Protection and discussed on the website (<http://www.nj.gov/dep/airworkgroups/wkshpsurvey.html>).

In addition, the New Jersey Department of Environmental Protection has already met with the federal land manager, regional organizations, and affected states for the purpose of the Regional Haze State Implementation Plan. Also, the New Jersey Department of Environmental Protection consults with the Metropolitan Planning Organizations regularly to discuss transportation-related air quality issues as required by the Transportation Conformity Rule.

Clean Air Act Section 127 requires the states to provide measures which will be effective to notify the public on a regular basis of instances or areas in which any air quality standard is exceeded during the preceding calendar year, to advise the public of the health hazards associated with such pollution, and to enhance public awareness of measures that can be taken to prevent such standards from being exceeded. The New Jersey Department of Environmental Protection has a standard operating procedure by which notification of National Ambient Air Quality Standards exceedances is sent to the press. Additionally, the notification of National Ambient Air Quality Standards exceedances is posted on the New Jersey Department of Environmental Protection's website (www.nj.gov/dep). When an exceedance or unhealthy air is forecasted, the information is sent out to participants of the New Jersey Department of Environmental Protection's listserv, an e-mail service that is used to broadcast information.

The New Jersey Department of Environmental Protection was delegated the prevention of significant deterioration authority by the USEPA. These rules do not currently apply to New Jersey for ozone because the entire State is designated as nonattainment for the 8-Hour Ozone National Ambient Air Quality Standard. The prevention of significant deterioration regulations only apply to attainment areas for a given pollutant. The prevention of significant deterioration requirements for the Fine Particulate Matter National Ambient Air Quality Standard will be discussed as part of the fine particulate matter attainment demonstration, which is due April 2008. For visibility improvement, the New Jersey Department of Environmental Protection will include all the necessary requirements in the Regional Haze State Implementation Plan.

I. Air Quality Modeling and Reporting – 42 U.S.C. § 7410(a)(2)(K) (Section 110(a)(2)(K))

States are required to provide for the use of air quality modeling to predict the effect of emissions on ambient air quality and to submit data related to such modeling when requested by the United States Environmental Protection Agency.

The New Jersey Department of Environmental Protection's air quality modeling work complied with United States Environmental Protection Agency's final guidance (April 2007) on the use of models in attainment demonstrations for the 8-hour ozone standard and the New Jersey

Department of Environmental Protection will use the United States Environmental Protection Agency final guidance for modeling fine particulate matter. This is a rapidly evolving field in which the New Jersey Department of Environmental Protection endeavors to use the latest methodology and techniques, and documents information that its staff uses when conducting modeling or when evaluating the performance of air quality models used for this purpose. The New Jersey Department of Environmental Protection consults and works with regional organizations that conduct the regional air quality modeling. The regional modeling for New Jersey was included in the October 2007 8-hour ozone attainment demonstration. A similar regional modeling will be included in the Regional Haze State Implementation Plan and the fine particulate matter attainment demonstration due in early 2008.

N.J.A.C. 7:27-8.5 and 22.8 contain air quality modeling requirements for stationary sources for the New Jersey Department of Environmental Protection's Air Permitting Program.

J. Major Stationary Source Permitting Fees – 42 U.S.C. § 7410(a)(2)(L) (Section 110(a)(2)(L))

States are required to assess the owner or operator of each major stationary source with fees sufficient to cover the reasonable costs of reviewing and acting upon any application for such a permit, and if a permit is granted, the reasonable costs of implementing and enforcing the terms and conditions of the permit. Owners or operators are also required to comply with the fee provisions of Title V Sections 501 – 507 of the Clean Air Act. Such fees are required to be payable to the permitting authority.

Under N.J.A.C. 7:27-22.31 (Operating Permits Fees), major stationary sources are required to pay fees to the State to sufficiently cover the cost of reviewing, approving, implementing and enforcing a permit.

K. Consultation with Local Entities – 42 U.S.C. § 7410(a)(2)(M) (Section 110(a)(2)(M))

States are required to provide for consultation and participation by local political subdivisions affected by the plan.

New Jersey provides the opportunity for consultation and participation to local political subdivisions during the public comment period of a proposed State Implementation Plan. The federal Clean Air Act requires that states include a public process in the State Implementation Plan. New Jersey's Air Pollution Control Act (N.J.S.A. 26:2C-8) and Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) requires a public process for any rulemaking. The New Jersey Department of Environmental Protection offers the opportunity to everyone in the State to participate in the public process for any State Implementation Plan or rulemaking. This includes a public comment period and a public hearing. Notices for the commenting period and the public hearing are circulated in newspapers, public libraries, and the New Jersey Department of Environmental Protection's Regional Enforcement Offices. The notices are also mailed through the United States Postal Service and through Listserv (electronic mailing system) to

organizations and interested parties that have signed up for the mailing, which includes the League of Municipalities. All 566 municipalities in New Jersey are members of the League of Municipalities, a voluntary association created to help communities do a better job of self-government through pooling information resources and brain power. The New Jersey Department of Environmental Protection assures that all comments and testimonies are seriously considered in rulemaking and when finalizing the State Implementation Plan.

The New Jersey Department of Environmental Protection is in constant communication with other State agencies and planning boards, such as the New Jersey Department of Transportation, Department of Health and Senior Services, Department of Agriculture, the Delaware Valley Regional Planning Commission, and the Northern and Southern Jersey Transportation Planning Organizations, on issues in the State Implementation Plan. The New Jersey Department of Environmental Protection also briefs the State's Clean Air Council on air issues, including the State Implementation Plan.

IV. Conclusion

Through the careful analysis of the State Implementation Plan and regulations, the New Jersey Department of Environmental Protection has concluded that most of the requirements under 42 U.S.C. § 7410(a)(1) and (2) (Section 110(a)(1) and (2)) for the 1997 the 8-Hour Ozone and Fine Particulate Matter National Ambient Air Quality Standards have been satisfied. The remaining requirements will be addressed through New Jersey's Regional Haze State Implementation Plan and the Fine Particulate Matter Attainment Demonstration State Implementation Plan, which are due in 2008.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

OCT 2 2007

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MEMORANDUM

SUBJECT: Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards

FROM: *for* William T. Harnett, Director *Scott Mathias*
Air Quality Policy Division (C539-01)

TO: Air Division Directors, Regions I-X

The purpose of this memorandum is to provide guidance on the "infrastructure" elements for State Implementation Plans (SIPs) required under section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 1997 8-hour ozone and fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS). Attachment A to this memo provides a list of the basic elements that States must include in their SIPs. To the extent that existing SIPs for ozone and particulate matter already meet these requirements, States need only certify that fact to the Environmental Protection Agency (EPA). To the extent that existing SIPs for ozone and particulate matter fail to address any of these requirements for purposes of the 1997 8-hour ozone or PM_{2.5} NAAQS, States need to make timely SIP submissions to EPA to address these requirements. We anticipate that States will already have approved SIPs in place for ozone that meet the basic requirements of sections 110(a)(1) and (2). For PM_{2.5}, however, we anticipate that many States may need to make SIP revisions to ensure that their existing SIPs for prior particulate matter NAAQS are revised to include the new particle size indicator.

Background

On July 18, 1997, the EPA promulgated new and revised NAAQS for ozone and particulate matter. For ozone, EPA revised the NAAQS to provide an 8-hour averaging period (versus a 1-hour averaging period for the pre-existing NAAQS), and set the level of the standard at 0.08 ppm (versus 0.12 ppm for the pre-existing NAAQS). For PM, EPA promulgated a new 24-hour and a new

annual NAAQS for PM_{2.5} (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers).¹

Under sections 110(a)(1) and (2) of the CAA, all States are required to submit plans to provide for the implementation, maintenance, and enforcement of the 8-hour ozone and PM_{2.5} standards. Sections 110(a)(1) and (2) require States to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by States within 3 years after promulgation of a new or revised standard. This being the case, States were required to submit such SIPs for the 1997 standards to EPA no later than July 2000. However, intervening litigation over the 1997 8-hour ozone and PM_{2.5} NAAQS, created uncertainty about how to proceed and, to date, States have not submitted SIPs to meet the basic or infrastructure requirements enumerated in sections 110(a)(1) and (2).

In March of 2004, Earth Justice initiated a lawsuit against EPA for failure to take action against States that had not made SIP submissions to meet the requirements of sections 110(a)(1) and (2), i.e., failure to make a "finding of failure to submit." On March 10, 2005, EPA entered into a Consent Decree with Earth Justice that obligates EPA to make official findings whether States have made required SIP submissions by dates certain. The Consent Decree obligates EPA to determine whether States have made SIP submissions required to meet CAA section 110(a)(2)(D)(i) relating to interstate transport by no later than March 15, 2005. The Consent Decree also obligates EPA to make a determination whether States have made submissions necessary to meet the remaining 110(a)(1) and (2) requirements by December 15, 2007, for the 8-hour ozone NAAQS, and by October 5, 2008, for the PM_{2.5} NAAQS.² It should be noted that the latter determinations pertain only to whether the submissions are complete, pursuant to section 110(k)(1)(A), and do not constitute EPA approval or disapproval of such submissions. In addition, the determinations required by the Consent Decree explicitly exclude any determinations regarding: (i)

¹ More recently, on December 18, 2006, EPA again revised the standards for particulate matter, tightening the 24-hour PM_{2.5} standard from 65 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 35 $\mu\text{g}/\text{m}^3$, and retaining the current annual fine particle standard at 15 $\mu\text{g}/\text{m}^3$. EPA also decided to retain the existing 24-hour PM₁₀ standard of 150 $\mu\text{g}/\text{m}^3$ and to revoke the annual PM₁₀. This guidance document applies only to the SIP submission requirements for the 1997 8-hour Ozone and PM_{2.5} NAAQS. EPA will address SIP requirements for the 2006 NAAQS separately, although the Agency notes that the statutory requirements for SIPs for new or revised NAAQS are comparable.

² The dates specified in the Consent Decree reflect the anticipated dates for submission of nonattainment area SIPs for each NAAQS, plus six months for EPA evaluation. EPA presumed that States would make SIP submissions meeting the basic requirements of sections 110(a)(1) and (2) for each NAAQS contemporaneously with, or not later than, SIPs meeting the nonattainment area plan requirements. EPA notes that recent decisions by the U.S. Court of Appeals for the District of Columbia concerning the implementation rule for the 8-hour Ozone NAAQS have affected certain nonattainment area SIP requirements. These judicial decisions do not, however, affect States' obligations under the CAA or EPA's obligations under the Consent Decree concerning the infrastructure SIP requirements of sections 110(a)(1) and (2).

submissions required by section 110(a)(2)(C) to the extent that subsection pertains to a nonattainment area new source permit program in part D Title I of the CAA; and (ii) submissions required by section 110(a)(2)(I) for Part D Title I nonattainment area plans.

In accordance with the Consent Decree, EPA has already published a finding that all States had failed to submit new SIPs addressing interstate transport for the 8-hour ozone and PM_{2.5} NAAQS, as required by section 110(a)(2)(D)(i) of the CAA (70 FR 21147, April 25, 2005). That finding initiated a 2-year deadline for the promulgation of a Federal Implementation Plan (FIP) by EPA for each such State unless, prior to that time, each State makes a submission to meet the requirements of Section 110(a)(2)(D)(i) and EPA approves such submission. On May 12, 2005, EPA published the Clean Air Interstate Rule (CAIR) which identifies the degree to which emissions of SO₂ and NO_x in certain States significantly contribute to nonattainment of, or interfere with maintenance of, the 1997 8-hour ozone and PM_{2.5} NAAQS in downwind States, and the reductions that must be achieved in those States to eliminate such contributions.

On August 15, 2006, EPA issued guidance entitled "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards." The section 110(a)(2)(D)(i) guidance indicates that States within the CAIR region can satisfy 110(a)(2)(D) by satisfying the requirements of the CAIR, and addresses what other States that are outside of the CAIR region should consider doing to meet the "significant contribution" and "interfere with maintenance" requirements of section 110(a)(2)(D)(i) for the 1997 standards. The section 110(a)(2)(D)(i) guidance also addresses what all States (whether inside or outside of the CAIR region) should consider in making SIP submissions to meet the "prevention of significant deterioration" and "protect visibility" requirements of section 110(a)(2)(D)(i). The SIP submissions addressed by the section 110(a)(2)(D)(i) guidance are those that are necessary to rectify the finding of failure to submit that EPA has already issued for all States for section 110(a)(2)(D)(i).

The guidance contained in this memorandum is intended as a reminder that States must have SIPs for the 1997 8-hour ozone and PM_{2.5} NAAQS that meet all of the requirements of sections 110(a)(1) and (2). Pursuant to the Consent Decree, EPA has an obligation to take action to determine whether States have made such submissions by the dates noted above. Because States should currently be in the process of submitting nonattainment SIPs for the 8-hour ozone standard and working on nonattainment area SIPs for the PM_{2.5} standard, we want to alert them to be sure that their SIPs also meet the basic requirements of sections 110(a)(1) and (2).

Guidance

The EPA believes that the currently-approved section 110 SIPs for ozone may already be adequate in most cases to implement the 8-hour ozone NAAQS. Many of the required section 110(a)(1) and (2) SIP elements relate to the general information and authorities that constitute the "infrastructure" of the ozone air quality management program, and these have been in place since the initial SIPs were submitted in response to the 1970 Clean Air Act. For particulate matter, however, EPA believes that some States may need to adopt language specific to the PM_{2.5} NAAQS to ensure that they have adequate SIP provisions to implement the PM_{2.5} NAAQS, e.g., existing State laws may refer to PM₁₀ specifically or to particulate matter more generally, rather than to PM_{2.5}. We believe that with one exception, the infrastructure requirements of sections 110(a)(1) and (2) are relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions. The one exception is section 110(a)(2)(G) relating to emergency episodes, for which EPA intends to take additional regulatory action to provide necessary numerical limits and concentration levels for emergency episode action plans for PM_{2.5}.

States should review and revise, as appropriate, their existing ozone and particulate matter SIPs to ensure that they are adequate to address the 8-hour ozone and PM_{2.5} NAAQS. If a State determines that its existing SIP is adequate, then the State needs to certify, via a letter to the Agency from the Governor or his/her designee, that the existing SIPs contain provisions that address the requirements for the 8-hour ozone and PM_{2.5} NAAQS. If a State determines that its existing ozone or particulate matter SIPs are inadequate, however, then the State needs to submit a SIP revision to make the appropriate changes.

With respect to PM_{2.5}, States may find it more advantageous to revise the language in their SIPs to identify "particulate matter" as the pollutant being implemented and define the size fractions as "those that EPA has currently set for the NAAQS" to the extent such an approach would be authorized by State law. This will ensure that the provisions remain adequate in the event that future changes occur to the particulate matter standards. States could also specify both PM₁₀ and PM_{2.5} as the size fractions if a State prefers to be more specific.

As an aid to the States in addressing the PM_{2.5} related requirements of Section 110(a)(2)(G) pertaining to emergency episode provisions, EPA intends to take action to revise 40 CFR, Part 51, subpart H (sections 51.150). The rule changes will establish the priority classifications which determine the emergency episode plan requirements for each area and establish a significant harm level (SHL) for PM_{2.5}. Until these changes are final, EPA recommends that States rely on relevant information contained in upcoming EPA rule proposals or other EPA-issued interim guidance to satisfy the section 110(a)(2)(G) requirements for PM_{2.5}. After EPA issues final rules, EPA will work with States to revise SIP

submissions that were based on interim information, as appropriate. States may wish to take advantage of the parallel processing mechanism for making their section 110(a)(2)(G) submittal in the interim while EPA completes rulemakings on the SHL and the emergency episode plan requirements under 40 CFR 51.150.

The SHL for the 8-hour ozone NAAQS will remain unchanged as 0.60 ppm ozone, 2-hr average, as indicated in 40 CFR Part 51.151. EPA believes that the existing ozone-related provisions of 40 CFR Subpart H remain appropriate. Therefore, EPA expects that for purposes of the 1997 8-hour ozone NAAQS, States need only to confirm that they have existing emergency episode plan provisions consistent with EPA's existing regulatory requirements.

By statute, States are required to make SIP submissions to meet the basic requirements of CAA sections 110(a)(1) and (2) within 3 years after promulgation of any new or revised standards. For the 1997 8-hour ozone and PM_{2.5} standards, this deadline was July 2000. By Consent Decree, as noted above, EPA has agreed to make a determination whether or not States have submitted SIPs to meet these requirements by a date certain. In the case of 8-hour ozone SIPs, this date is December 15, 2007. For PM_{2.5} SIPs, this date is October 15, 2008. In order for EPA to evaluate the submissions adequately, EPA requests that States make their certifications of SIP adequacy or SIP revisions as soon as possible and to the extent feasible sufficiently in advance of these dates to allow EPA time to determine whether complete submissions have been made.

If you have any questions concerning this guidance, please contact Mr. David Sanders at (919) 541-3356. Please ensure that the appropriate air agency officials for States in your Region are made aware of this guidance.

Attachments

cc: Margo Oge, OTAQ
Steve Page, OAQPS
Brian McLean, OAP
Richard Wayland, OAQPS
Lydia Wegman, OAQPS
Peter Tsirigotis, OAQPS

Attachment A: Required Section 110 SIP Elements

The SIP elements listed below are required under section 110(a)(1) and (2). Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists the basic or "infrastructure" elements that all SIPs must contain. We note that this list is not intended to constitute an interpretation of these provisions, or a change of past practice with respect to these provisions, merely a brief description of the required SIP elements.

Emission limits and other control measures: Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters. EPA notes that the specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirement of section 172, not the timing requirement of section 110(a)(1), and also that SIPs to meet this section are not covered by the Consent Decree.

Ambient air quality monitoring/data system: Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request.

Program for enforcement of control measures: Section 110(a)(2)(C) requires States to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet prevention of significant deterioration (PSD) and nonattainment NSR requirements.

Interstate transport: Section 110(a)(2)(D) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one State from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQs in another State, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another State. EPA has already issued CAIR to assist States in developing SIPs to meet this requirement for purposes of the 8-hour Ozone and PM_{2.5} NAAQS, and has issued separate guidance to all States on how to comply with each prong of this statutory provision.

Adequate resources: Section 110(a)(2)(E) requires States to provide for adequate personnel, funding, and legal authority under State law to carry out its SIP, and related issues.

Stationary source monitoring system: Section 110(a)(2)(F) requires States to establish a system to monitor emissions from stationary sources and to submit

periodic emissions reports.

Emergency power: Section 110(a)(2)(G) requires States to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

Future SIP revisions: Section 110(a)(2)(H) requires States to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate.

Consultation with government officials: Section 110(a)(2)(J) requires States to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to section 121 relating to consultation.

Public notification: Section 110(a)(2)(J) further requires States to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances.

PSD and visibility protection: Section 110(a)(2)(J) also requires States to meet applicable requirements of part C related to prevention of significant deterioration and visibility protection.

Air quality modeling/data: Section 110(a)(2)(K) requires that SIPs provide for performing air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and submission of such data to EPA upon request.

Permitting fees: Section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit.

Consultation/participation by affected local entities: Section 110(a)(2)(M) requires States to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
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JON S. CORZINE
Governor

LISA P. JACKSON
Commissioner

December 22, 2006

The Honorable Alan J. Steinberg
Regional Administrator
United States Environmental Protection Agency
Region 2
290 Broadway- 26th Floor
New York, New York 10007-1866

Dear Regional Administrator Steinberg:

This letter is in response to the United States Environmental Protection Agency's (USEPA) April 25, 2005 finding¹ that all 50 states failed to submit State Implementation Plans (SIPs) to satisfy the requirements of Section 110(a)(2)(D)(i) of the Clean Air Act, commonly referred to as the transport SIP requirement. Specifically, this Section of the Clean Air Act requires that states submit a SIP that contains adequate provisions prohibiting any source, or other type of emissions activity, within the State from emitting any air pollutants in amounts that will:

- 1) Contribute significantly to nonattainment of the National Ambient Air Quality Standard (NAAQS) for areas in another state or interfere with the maintenance of the NAAQS by any other state;
- 2) Interfere with measures required to meet the implementation plan for any other state related to Prevention of Significant Deterioration (PSD); and,
- 3) Interfere with measures required to meet the implementation plan for any other state related to Regional Haze and Visibility.

On August 11, 2006, the USEPA issued guidance² on what states should submit in order to comply with Section 110(a)(2)(D)(i) of the Clean Air Act. The remainder of this letter outlines how New Jersey plans to address this guidance. New Jersey believes that addressing transported emissions, both to and from the State, is critical for its multistate nonattainment areas to attain and maintain the health-based ambient air quality standards. To that end, it is vital that,

¹ 70 Fed. Reg., 21147-21151 (April 25, 2005)

² "Guidance for State Plan Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards", August 11, 2006.

in addition to the state and regional efforts currently underway, the USEPA continue to take action where states are preempted from action. Specifically, New Jersey urges the USEPA to focus its efforts to address emissions from onroad mobile sources, small offroad engines, ships and locomotives in a timely fashion.

Significant Contribution to Nonattainment, or Interference with Maintenance, of the NAAQS in Another State:

The USEPA's guidance document addresses the first two requirements of Section 110(a)(2)(D)(i) differently, depending on whether or not the state in question falls under the purview of the federal Clean Air Interstate Rule (CAIR). For those states, like New Jersey, that are subject to the requirements of the federal CAIR, the USEPA guidance indicates that submittal of a CAIR SIP, or reliance on the CAIR FIP, would satisfy the requirements of Section 110(a)(2)(D)(i). New Jersey does not concur with this guidance.

New Jersey is currently working to propose an abbreviated CAIR SIP that will comply with the federal CAIR requirements. This proposal is expected by the end of 2006. Based on the USEPA's guidance, this action by New Jersey would satisfy the requirements of the Section 110(a)(2)(D)(i). However, despite the USEPA's assurances to the contrary, New Jersey continues to be concerned that the implementation of CAIR alone will not be sufficient to address interstate transport issues, especially in the Northeastern and Mid-Atlantic United States. In fact, according to the 2010 CAIR modeling, between 26 and 82 percent (depending on the county in question) of New Jersey's 8-hour ozone is attributed to transported emissions. In addition to our concerns that CAIR is not stringent enough, nor implemented on a quick enough timeframe, to adequately meet attainment needs and provide timely protection of public health and welfare, its focus is solely on Electric Generating Units (EGUs). As such, CAIR does not address interstate transport of emissions from the other sectors (e.g., non-EGU, mobile, area).

In light of these concerns, New Jersey intends to implement additional strategies to address the transport of ozone precursors emissions both to and from the State. As part of a regional effort, New Jersey intends to:

- Continue to meet its obligations under the NO_x SIP call, while working to implement the federal CAIR program, and develop a program of additional emission reductions for EGUs,
- Update its Reasonably Available Control Technology (RACT) rules to address both the 8-hour ozone and PM_{2.5} precursors,
- Review the USEPA's revised and new CTGs, as they are released, and update state regulations where New Jersey has affected sources,
- Continue to implement the Low Emission Vehicle (LEV) requirements,
- Develop rules and/or other measures to address emissions on High Electrical Demand Days (HEDD)
- Propose additional requirements for consumer product formulations and portable fuel containers; and
- Reduce the allowable sulfur content in heating oil.

Many of New Jersey's existing requirements are already more stringent than the existing pollution control requirements in neighboring [re: upwind] states. We encourage our neighboring states to at least match our existing requirements, and we commit to consider any additional measures, beyond those already in place, implemented by our neighboring states, if more stringent than our current actions. We also continue to work with our neighboring states, both within and near the Ozone Transport Region, to develop more stringent regional measures to improve air quality throughout the OTR and beyond.

All actions which New Jersey determines are necessary to attain and maintain the NAAQS in New Jersey, and to attain and maintain the NAAQS in neighboring states, will be proposed and included as part of New Jersey's SIPs, and taken through public process at that time.

The PSD and Nonattainment New Source Review (NNSR) Requirement:

The USEPA's guidance requires states to confirm that:

- 1) Major sources currently subject to PSD and NNSR permitting programs also apply to the 8-hour ozone standard and that SIP-approved states are on track to meet the June 15, 2007 deadline for SIP submissions required by the Phase II ozone implementation rule.
- 2) Major sources are subject to PSD and NNSR permitting programs implemented in accordance with the USEPA's interim guidance calling for use of PM₁₀ as a surrogate for PM_{2.5} in the PSD and NNSR programs.

The entire State of New Jersey was previously in nonattainment for the 1-hour ozone NAAQS, and as such New Jersey already has a NNSR permitting program addressing the ozone precursors (VOC and NO_x). Since the entire State continues to be in nonattainment for the 8-hour ozone NAAQS, the existing ozone NNSR program remains in effect and applies to the 8-hour ozone NAAQS standard for major stationary sources. The State is on track to meet its June 15, 2007 obligations to submit a final attainment demonstration for the 8-hour ozone NAAQS by that date. Changes to New Jersey's NNSR rules are not necessary for ozone.

On December 29, 2005, the New Jersey Department of Environmental Protection (NJDEP) submitted an equivalency determination documenting that the current New Jersey NNSR program is more stringent than the Federal program, including lower applicability levels and higher offset rates than the federal rules. These more stringent requirements are part of New Jersey's effort to reduce transported air pollution.

With respect to the PM_{2.5} standard, New Jersey has both attainment and nonattainment areas throughout the State, necessitating both a PSD and NNSR program with respect to this pollutant. To date, the USEPA has yet to finalize its implementation rule for the PM_{2.5} NAAQS.

In the interim, New Jersey is complying with the USEPA's interim guidance³ by using PM₁₀ as a surrogate for PM_{2.5} in its existing NNSR program. Where PM₁₀ emission increases would be significant in a PM_{2.5} nonattainment area, New Jersey applies its NNSR rule. The NJDEP plans to revise its NNSR program and adopt a PSD program, including specific reference to PM_{2.5}, once the USEPA finalizes its implementation rule for the PM_{2.5} NAAQS, court remanded monitoring and recordkeeping requirements are adopted by the USEPA, and other judicial action is complete on several key areas of challenge. These rules will be subject to public comment, once proposed.

The Visibility Requirement:

The USEPA's guidance relieves the State of its Section 110(a)(2)(D)(i) requirement regarding visibility until such time as that state submits its Regional Haze SIP, due to the USEPA in December of 2007. We agree that our Regional Haze SIP will assess whether there is any interference with measures required to be included in the applicable implementation plan for any other State to prevent significant deterioration of air quality or to protect visibility. As with all of New Jersey's SIP proposals, a public comment period on the Regional Haze SIP, including the Section 110(a)(2)(D) requirement portion, will allow interested parties to provide input on the actions presented in the proposal.

If you have any questions regarding New Jersey's intended actions for addressing its Section 110(a)(2)(D)(i) obligations, please contact William O'Sullivan, Director of the Division of Air Quality, at (609) 984-1484.

Sincerely yours,



Lisa P. Jackson
Commissioner

C: Ray Werner, USEPA Region II
Rick Ruvo, USEPA Region II
Howard Geduldig, NJDOL

³Memorandum entitled "Implementation of New Source Review Requirements in PM-2.5 Nonattainment Areas" from Stephen D. Page, Director to the Addressees, undated. See <http://www.epa.gov/NSR/guidance.html> for details.