



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
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Mr. George S. Aburn, Jr., Director
Air & Radiation Management Administration
Maryland Department of the Environment
Montgomery Park Business Center
1800 Washington Blvd.
Baltimore, MD 21230

Dear Mr. Aburn:

We have been asked for an opinion on whether, if a 2010 motor vehicle emissions budget or budgets were set as part of the contingency plan, would the Environmental Protection Agency (EPA) require that a 2010 projection inventory for area, nonroad and point sources also be included in the State Implementation Plan (SIP) in order for the budgets to be deemed adequate and approved for conformity?

We do not believe that this is the case for the situation where the motor vehicle emissions budget is used to document the quantity of reductions from mobile source measures that are part of the contingency plan. One of the criteria for determining if a motor vehicle emissions budget is adequate is that which is found in section 93.118(e)(4)(iv) of the conformity rule (40 CFR part 93). This states that: "The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission)."

In the case of an attainment year, RFP milestone or maintenance plan budget, consideration of the emissions from all source sectors is relevant to whether or not the implementation plan meets applicable requirements for reasonable further progress, attainment, or maintenance. For instance, the attainment plan contains a projection of attainment year emissions which will result from the control strategy and a demonstration based upon air quality modeling and other analyses that that level of emissions is consistent with attainment. Likewise, the RFP plan for the Washington, DC area must contain a 2008 target level of emissions for the entire area and a demonstration that the control strategy is projected to result in a level of emissions below that target level. Both of these control strategy plan elements need to demonstrate that the overall level of emissions including the motor vehicle emissions budgets in the area will be below the levels consistent with attainment or RFP.

In contrast, the pertinent requirements for the contingency measures element of the attainment plan are only that the plan provides for additional emissions reductions of up to 3 percent of the emissions in the adjusted base year inventory and that these reductions be achieved in the year following that in which the attainment failure has been identified, or, that these

reductions be in excess of to the needs of the attainment demonstration or RFP plan. This is discussed further in the following documents: General Preamble of April 16, 1992 (57 FR at 13510-13512, and 13520); Section 9.2 of "Guidance for Growth Factor, Projections, and Control Strategies for the 15 percent Rate-of-Progress Plans" (EPA-452/R-93-002), March 1993; section IV.J. "Are Contingency Measures Required in the Event of Failure To Meet a Milestone or To Attain the 8-Hour Ozone NAAQS?" of the June 2, 2003, proposed rule (68 FR 32802 at 32837); and section IV. F. "Are contingency measures required in the event of failure to meet a milestone or attain the 8-hour ozone NAAQS?" of the preamble to our November 29, 2005 final rule (70 FR 71612 at 71650-71651).

As announced in the November 29, 2005, final rule (70 FR at 71651), for the 8-hour ozone standard we intend to continue to observe our existing policies regarding contingency measures for areas covered under subpart 2. For contingency measure plans, EPA has always been able to approve the contingency plan as long as the reductions are from adopted rules, the reductions will be timely (no later than within a year after our finding of failure), and the over all contingency plan achieves the minimum amount of reduction (generally 3% of the baseline). EPA has approved numerous contingency measure SIPs that only demonstrate the control strategy provides for additional reductions in select source categories without regard to what is projected to occur in all emissions source categories after the attainment year. For example, see 66 FR 634, January 3, 2001 (Greater Connecticut), 66 FR 666, January 3, 2001 (Western Massachusetts), or 70 FR 25688, May 13, 2005 (Washington, DC severe area).

For the contingency plan then, we believe that the motor vehicle emissions budgets in this case would only need to demonstrate that the SIP provides for additional reductions in mobile source emissions (beyond those assumed in the attainment plan) in a year after the attainment date.

If you have any questions, please do not hesitate to contact Mr. Christopher Cripps, at 215-814-2179.

Sincerely,



Judith M. Katz, Director
Air Protection Division

Cc: Diane Franks, MDE
Brian Hug, MDE