UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

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MEMORANDUM

SUBJECT: TSP Redesignation Requests

FROM: Joseph W. Paisie, Acting Chief
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TO: Chief, Air Branch
Regions I-X

Recently, a number of Regions have requested guidance on redesignating existing total suspended particulate (TSP) nonattainment areas to attainment. This memorandum provides guidance on the technical review and processing of such redesignation requests. It indicates that additional air quality analysis will not be required for such redesignation requests. However, the area will be subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act.

Background

On July 1, 1987, EPA promulgated the national ambient air quality standard (NAAQS) for PM-10 (particulate matter nominally 10 microns or smaller in size). The Agency determined that this standard would be implemented pursuant to section 110 of the Clean Air Act (Act). This meant that the designation process of section 107 and the nonattainment provisions of Part D did not apply to the PM-10 NAAQS. However, as a part of this promulgation, EPA stated that it would continue to accept requests by the State to revise area designations for TSP from nonattainment to attainment or unclassifiable. The requests would continue to be reviewed during the transition period for compliance with EPA's redesignation policies as issued in memorandums from the Director of the Office of Air Quality Planning and Standards, dated April 21, 1983 and September 30, 1985 [see also 52 FR at 24679 (July 1, 1987)].

States were encouraged to request redesignation of TSP nonattainment areas to unclassifiable at the time the PM-10 control strategy for the area was submitted. When EPA approved the control strategy as sufficient to attain and maintain the PM-10 NAAQS, it would also approve the redesignation. An area designation was needed until EPA promulgated PM-10 increments because the section 163

prevention of significant deterioration increments depend upon the existence of section 107 designations. Accordingly, EPA believed it would be appropriate to act on requests to delete TSP designations at such time that States had PM-10 State implementation plans (SIP's) in place and EPA promulgated PM-10 increments. The EPA has examined the pre-existing policy in light of the passage of the 1990 Amendments to the Act.

Requirements for Redesignating Under the 1990 Clean Air Act

Section 107(d)(3) of the amended Act sets out the requirements governing area redesignations. For example, section 107(d)(3)(A) indicates the basis upon which EPA may initiate a redesignation and sections 107(d)(3)(A)-(D), among other things, specify the affected State's role in the designation process including authority for the State to initiate the process. Sections 107(d)(3)(E) and (F) set out restrictions which apply to redesignation of a nonattainment area. Section 107(d)(3)(E) prohibits redesignation of an area from nonattainment to attainment unless five specified conditions are met. Section 107(d)(3)(F) of the Act prohibits redesignation of an area from nonattainment to unclassifiable.

Section 107(d)(4)(B) of the amended Act expressly provides that any designation for particulate matter (measured in terms of TSP) that the Administrator promulgated pursuant to section 107(d) prior to the date of enactment of the 1990 Amendments shall remain in effect for purposes of implementing the maximum allowable concentrations of particulate matter (measured in terms of TSP) pursuant to section 163(b), until the Administrator determines that such designation is no longer necessary for that purpose.

It is our view that the purpose for the TSP designations elaborated in section 107(d)(4) evinces a congressional intent

which is largely different from the purpose for the redesignation requirements specified in section 107(d)(3). Section 107(d)(4) indicates that Congress envisioned that EPA would keep the TSP designations for the narrow purpose of implementing the particulate matter increments measured in terms of TSP. Section 107(d)(3) is, in part, directed to limiting redesignations consistent with the statute's air quality goals by ensuring, for example, that before a nonattainment area is redesignated attainment, the applicable SIP requirements have been implemented and the area attains the applicable NAAQS. These requirements make sense and have force where there are NAAQS in place. However, there are no TSP NAAQS and there is no TSP-directed SIP program. While at this time EPA believes that a TSP designation may be necessary to implement the particulate matter increments, this narrow purpose can be fostered by any designation for TSP. Accordingly, we believe it is reasonable to conclude that TSP

redesignations are not subject to the section 107(d)(3) requirements. Thus, among other things, an area could be redesignated from nonattainment to unclassifiable for TSP . However, an area may be concurrently eligible for redesignation to attainment with no additional requirements for air quality analysis, as explained in the following section. This is not intended to suggest that these redesignations are exempt from rulemaking requirements, generally. The TSP redesignations are subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act and, therefore, the applicable rulemaking procedures should be observed.

Statutory Restrictions on Modifications to Existing TSP Requirements

As suggested above, because the revised statute sets out the narrow purpose of the TSP designations, EPA believes it is not required to examine the TSP air quality considerations of a TSP redesignation, e.g., ensuring that all of the applicable TSP SIP requirements were implemented [section 107(d)(3)(E)(iii)]. However, there may be other air quality implications, especially PM-10 impacts, which follow not from a TSP redesignation but from a revision to existing TSP requirements. Sections 110(1) and 193

of the statute contain very specific restrictions on modifications or revisions to applicable implementation plans that may interfere with requirements of the Act or result in relaxations of control requirements. Sections 110(1) and 193 of the Act logically apply to TSP because TSP control requirements are surrogates for PM-10 control. In some areas, the applicable TSP implementation plan may constitute, in whole or in part, an interim PM-10 SIP. Thus, while TSP designations may be revised and still further the purpose of implementing the particulate matter increments, modification to existing TSP requirements are restricted by applicable provisions of the statute. These potential restrictions are spelled out in more detail below.

Section 193 of the amended Act prohibits the modification in any manner of any control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of enactment of the 1990 Amendments in any area which is nonattainment for any pollutant unless the modification ensures equivalent or greater emission reductions of such air pollutant. By prohibiting the relaxation of any pre-Amendment control requirements in nonattainment areas unless at least equivalent emission reductions are ensured elsewhere in the area, this provision represents an antibacksliding principle--a Congressional intent to keep emissions reductions in nonattainment areas at least at their 1990 levels.

Further, section 110 of the Act provides that EPA shall not approve a SIP revision if the revision interferes with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirement of the Act. Thus, this provision embodies a general "noninterference" restriction on SIP revisions. Note that in one sense section 110(1) is broader than section 193 in that it applies to SIP revisions generally whereas section 193 is limited to preAmendment control requirements. However, depending on the circumstances, the noninterference standard of section 110(1) may be more or less restrictive than the antibacksliding principles embodied in section 193.

Taken together, these two provisions lead to the following results, which are keyed to the PM-10 air quality status of the affected area.

1. The TSP nonattainment designation for an area is revised and the area is currently unclassifiable for PM-10.

If a State submitted a SIP revision for an area after its TSP nonattainment designation was revised and the area also is unclassifiable for PM-10, then section 193 would not apply because there would be no particulate matter nonattainment designation for the area. However, that SIP revision would be subject to review under section 110(1) and must not interfere with the requirements of the Act. For example, the revision must not interfere with the requirement of the Act to ensure maintenance of the PM-10 NAAQS [see, e.g., section 110(a)(1)]. Similarly, there are section 110(1) implications if the State TSP plan for an area contains provisions which modify the plan automatically upon approval of a TSP redesignation by EPA. The EPA should not redesignate the area unless EPA has adequate assurance that the modifications flowing from the redesignation will not interfere with any requirement of the Act, such as maintenance of the PM-10 NAAQS. Thus, if a TSP plan revision either submitted to EPA for approval or automatically occurring upon redesignation would result in a significant increase in particulate matter emissions then, prior to approval of either action, air quality analyses should be conducted to assess the potential impact on continued maintenance of the PM-10 NAAQS.

2. The TSP nonattainment designation for an area is revised and the area is currently nonattainment for PM-10.

If an area whose TSP redesignation is revised is currently nonattainment for PM-10, section 193 prohibits any modification to pre-Amendment control requirements in the area unless such modification ensures at least equivalent emission reductions. Section 110(1) also would apply in reviewing any TSP SIP revision for an area whose TSP nonattainment designation is revised but is

nonattainment for PM-10. If the SIP revision would interfere with, among other things, the area's reasonable further progress towards attainment of the PM-10 NAAQS or other applicable PM-10 Part D

requirements then, consistent with section 110(1), the SIP revisions should not be approved. Thus, where the affected State submits a TSP SIP revision for an area which is currently nonattainment for PM-10, EPA should not act on such revision without an assessment of the PM-10 air quality impacts of such revision. Finally, if the applicable TSP plan for the area has provisions which result in the automatic relaxation of control requirements upon the redesignation of the area for TSP, then any such revised designation should not be approved unless, consistent with section 193, such modification is accompanied with at least equivalent emission reductions. Similarly, if the applicable TSP implementation plan automatically is modified upon the redesignation of the area for TSP then any such revised designation should not be approved unless such modification is accompanied with a demonstration that the revision does not interfere with requirements of the Act (including the applicable Part D PM-10 requirements to make reasonable further progress towards attainment, meet quantitative milestones, attain the PM-10 NAAQS by specified dates, etc.).

There is one final consideration before redesignating a TSP nonattainment area. For purposes of the new source review program, it would be prudent to maintain the same area designation for both TSP and PM-10. For example, having an area designated as attainment for TSP and nonattainment for PM-10 would subject the same area to two different new source review analysis.

You should borrow generously from the relevant discussions in this memorandum in crafting preambles for TSP redesignations. We will assist you in tailoring rationale appropriate for the particular situation presented. Finally, I encourage the processing of any approvals as direct final rulemaking actions if adverse comments are not anticipated. This will minimize the use of Agency resources.

If you have any questions or comments concerning this issue, please contact Andy Smith at 919-541-5398 or myself at 919-541-5556.

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