

3/2/95

MEMORANDUM

SUBJECT: Ozone Attainment Demonstrations

FROM: Mary D. Nichols
Assistant Administrator for Air and Radiation

TO: Regional Administrator, Regions I-X

The purpose of this memorandum is to provide guidance on an alternative approach to provide States flexibility in their planning efforts for ozone nonattainment areas classified as serious and above. The basic principles of this approach are: 1) meeting the attainment dates in the Clean Air Act while maintaining progress, 2) ensuring enforceability of commitments to adopt additional measures needed to reach attainment, and 3) promoting market-based alternatives. The EPA will work with States to encourage the development of market-based trading programs to provide flexibility in meeting the requirements of these control measures. This guidance applies to areas significantly affected by ozone transport. In consultation with your States, you should determine whether it is appropriate to apply it to other areas as well.

Background

The 1990 Clean Air Act Amendments set forth many new requirements intended to address widespread nonattainment of the NAAQS for ozone. Although a great deal of work has been done and significant progress has been made, many States have been unable to complete these State implementation plan (SIP) requirements within the schedules prescribed in the Act due to circumstances beyond their control. This is a particularly difficult problem for areas affected by transport of ozone and ozone precursors. These areas must develop complex regulatory plans, based on photochemical grid models that in many cases must take into account upwind and downwind flow of ozone and precursors. The models, in turn, must be based on detailed emission inventories and other inputs, the development of which has been unavoidably delayed due to unforeseen

difficulties in gathering the necessary data. Similarly, in many instances, the large amount of reductions likely to be needed to demonstrate attainment, and the consequent difficulties in developing control measures to achieve those reductions, has resulted in unavoidable delays in rule development by the States.

This memorandum provides States with an approach for obtaining full approval for their attainment demonstration State implementation plans by implementing a two-phased program. In addition to the other requirements set forth in this memorandum, States must fulfill all ozone nonattainment obligations due to be completed prior to November 1994 (e.g., 15 percent plans, VOC and NOx RACT) before EPA will approve ozone nonattainment plans based on this approach.

Phase I

Under the first phase, States should submit a plan to implement, by May 1999, ¹ a set of specific control measures (including at least a 9 percent reduction to satisfy rate-of-progress requirements) to obtain major reductions in ozone precursors. In the Northeast ozone transport region (OTR), the measures should include: 1) all mandatory Clean Air Act measures required prior to November 1994, including: VOC and NOx RACT on major sources, enhanced I/M, reformulated gasoline (where required), rate-of-progress requirements (at least up to 1999), clean fuel fleets; 2) the regional NOx MOU (on the timetable agreed upon by the OTC); 3) LEV or a 49-State car program if one is adopted. The specific control measures required in areas outside the OTR will be determined on a case-by-case basis based on consultation between the States and the appropriate Regional Office(s). For the Lake Michigan States (Illinois, Indiana and Wisconsin) the phase I measures should include all measures necessary to meet the rate-of-

¹ There are two exceptions to this date. The first is where the Act specifies a different date (earlier or later). In this situation, measures should be implemented in accordance with the schedule in the Act. The second case is where States have agreed (e.g., in a memorandum of understanding) to implement specific regional controls according to a schedule outlined in the MOU. In this case, States should follow the implementation schedule agreed to in the MOU.

progress requirements out to the attainment date (2007). At a minimum, the measures selected for all other areas should be comparable to those in the OTR and Lake Michigan area.

In addition, SIPs should include either modeling with interim assumptions about ozone transport (this modeling might not show attainment) or modeling that shows attainment based on an assumed boundary condition (to be determined in consultation with EPA). Finally, submittals should include an enforceable commitment to 1) participate in a consultative process to address regional transport, 2) adopt additional control measures as necessary to attain the ozone NAAQS, meet rate-of-progress requirements, and eliminate significant contribution to nonattainment downwind, and 3) identify any reductions that are needed from upwind areas for the area to meet the NAAQS. The commitment should also specify a schedule for completing adoption of additional rules. An enforceable commitment is one that has been adopted into the SIP by the State and is submitted to EPA as a SIP revision. The EPA will work with States regarding the specific commitments that are needed.

States should submit, by May 1995, a letter committing to follow the approach described in this guidance, as well as a general explanation of efforts to date to complete both the attainment modeling (and the emission inventory and other inputs to the model) and the regulations necessary to achieve reductions. The letter should include a schedule for the adoption of enforceable rules needed to implement the required phase I control measures.

In order to provide lead time for phased implementation of those measures not later than May 1999, any measures not already scheduled for earlier adoption should be adopted no later than the end of 1995. If administrative scheduling, such as legislative sessions or State review procedures renders it impossible for a control agency to complete the regulatory process for certain rules by the end of 1995, the State may propose a schedule providing for the adoption of such rules during 1996. Again, the important point is that the State must adopt enforceable measures by a date that ensures adequate lead time to enable full implementation no later than May 1999. The Regions should track States' progress toward completion of the adoption process.

Phase II

The second phase of this approach begins with a 2-year process, ending at the close of 1996, to assess regional control strategies and refine local control strategies, using improvements in the modeling process (e.g., more refined emission inventories) to perform further control strategy evaluations that take into consideration potential regional control strategies. This will also give the States and EPA the opportunity to determine appropriate regional strategies to resolve transport issues. The goal of phase II is for EPA and the affected States to reach consensus on the additional regional, local and national emission reductions that are needed for the remaining rate-of-progress requirements and attainment. In the event that agreement is not reached, EPA intends, by the end of 1997, to use its authority under the Act (e.g., under sections 126 and/or 110) to work with all affected States to ensure that the required reductions are achieved.

Based on the results of the 2-year assessment, States will be expected to submit by mid-1997 the modeling and attainment plan to show attainment through local and regional controls. The attainment plan should identify the measures that are needed for rate-of-progress and attainment. The remaining rules needed for serious areas to attain must be adopted and implemented in time for those areas to meet their attainment date of 1999.

For nonattainment areas with later attainment dates, States should adopt and implement local and regional control measures as determined to be necessary to meet the statutory attainment deadlines. States should phase-in adoption of rules to provide for implementation of measures for rate-of-progress beginning in the period immediately following 1999. These rules must be submitted to EPA no later than the end of 1999 (unless they were submitted as part of phase I), and provide for timely implementation of progress requirements.

If you have any questions during implementation of this policy, please contact me or John Seitz, Director of the Office of Air Quality Planning and Standards. The staff contact is Laurel Schultz (919-541-5511).

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