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

JUL 9 1992

MEMORANDUM

SUBJECT: Processing of State Implementation Plan (SIP) Submittals

FROM: John Calcagni, Director
Air Quality Management Division, OAQPS (MD-15)

TO: Director, Air, Pesticides and Toxics
Management Division, Regions I and IV
Director, Air and Waste Management Division,
Region II
Director, Air, Radiation, and Toxics Division,
Region III
Director, Air and Radiation Division,
Region V
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Region VI
Director, Air and Toxics Division,
Regions VII, VIII, IX, and X

This memorandum provides guidance concerning the processing of SIP submittals. In general, there are three situations that can occur related to each required submittal: the State may fail to submit the required plan, the State may make a submittal that is not complete, or the State may make a complete submittal. Once a State submits a SIP and the Environmental Protection Agency (EPA) has determined that the submittal is complete, EPA must either approve or disapprove the submittal within a specified time period. However, if the State fails to make a required submittal or makes a submittal that is determined to be incomplete, the sanctions and Federal implementation plan (FIP) provisions of sections 179 and 110(c), respectively, will be triggered. In addition, disapproval of a submittal also triggers the sanctions and FIP provisions. These provisions are discussed in further detail in this memorandum.

There are, however, three alternatives to full approval or full disapproval of a complete SIP submittal: partial approval, limited approval, and conditional approval. Each of these is discussed in more detail below along with some guidance as to when each might be used. In addition, Attachment 1 to this 2

memorandum contains several examples of how these may be used. Attachment 2 to this memorandum is a table that summarizes the requirements discussed below.

Partial Approval/Disapproval

Section 110(k)(3) of the amended Clean Air Act (Act) addresses the situation in which an entire submittal, or a separable portion of a submittal, meets all applicable requirements of the Act. Where the entire submittal meets all the requirements of the Act, EPA will fully approve the entire submittal. In the case where a separable portion of the submittal meets all of the applicable requirements, partial approval may be used to approve that part of the submittal and disapprove the remainder. It is important that the two parts of the submittal be separable. By separable, EPA means that the action it anticipates taking will not result in the approved rule(s) being more stringent than the State anticipated. See Bethlehem Steel Corp. v. Gorsuch, 742 F. 2d 1028 (7th Cir. 1984); Indiana and Michigan Elec. Co. v. U.S. E.P.A., 733 F. 2d 489 (7th Cir. 1984). For example, EPA cannot approve part of a submittal that specifies control measures and disapprove the part that specifies the test methods associated with those control measures. The EPA has frequently taken a partial approval approach in the past to process groups of rules that are submitted

together. The EPA can approve some of the rules and disapprove the rest as long as the rules that are disapproved do not affect those that are approved. The disapproval of any part of a required SIP submittal starts the clocks discussed above for sanctions and FIP'S.

Limited Approval/Disapproval

In some cases, a submittal may contain certain provisions that meet the applicable requirements of the Act along with other provisions that do not meet the requirements, and the provisions are not separable. Although the submittal may not meet all of the applicable requirements, EPA may want to consider whether the submittal as a whole has a strengthening effect on the SIP. If that is the case, limited approval may be used to approve a rule that strengthens the existing SIP as representing an improvement over what is currently in the SIP and as meeting some of the applicable requirements of the Act.

The Act does not expressly provide for limited approvals. Rather, EPA is using its "gap-filling" authority under section 301(a) of the Act in conjunction with the section 110(k)(3) approval provision to interpret the Act to provide for this type of approval action. 3

Through a limited approval, EPA would concurrently, or within a reasonable time thereafter, disapprove the rule, under the relevant provision(s) of Part D, for not meeting all of the applicable requirements of the Act. As with the limited approval action the limited disapproval is a rulemaking action, and it is subject to notice and comment. Under section 110(k), EPA must take final rulemaking action on SIP submittals within 12 months of the date EPA determines the submittal is complete or the submittal is automatically deemed to be complete if EPA fails to make a completeness determination. As a general matter, although the statute directs EPA to act within that timeframe, EPA's failure to finalize the disapproval portion of the action within that 12-month timeframe will not affect the validity of any prior or subsequent limited approval or limited disapproval.[See footnote 1] The EPA's failure to take action prior to the expiration of the 12-month period could, however, subject EPA to a lawsuit to compel such an action.

A key distinction between the limited approval and a partial approval is that under a limited approval EPA's approval action goes to the entire rule. In other words, although portions of a rule prevent EPA from finding that the rule meets a certain requirement of the Act, EPA believes that the rule, as a whole, strengthens the SIP. Therefore, EPA approves the entire rule--even those portions that prohibit full approval. Likewise, when EPA issues the limited disapproval, the disapproval applies to the entire rule as failing to meet a specific requirement of the Act. The rule remains a part of the SIP, however, under the limited disapproval, because the rule strengthens the SIP. The disapproval only applies to whether the submittal meets a specific requirement of the Act and does not affect incorporation of the rule into the approved, federally enforceable SIP.

The primary advantage to using the limited approval approach is to make the State submittal federally enforceable and to increase the SIP's potential to achieve additional reductions. Therefore, limited approval should not be used to approve any rule that is unenforceable for all situations--for example, a rule that lacks a test method. These rules and any other rules that do not have an overall strengthening effect on the SIP should be disapproved. Limited approval can be used, however,

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Footnote 1. The March 22, 1991 memorandum from John Calcagni discussed the potential impact of Abramowitz v. U.S. E.P.A., 832, F. 2d 1071 (9th Cir. 1988), on EPA's decision to split the approval and disapproval portions of a limited approval. After reevaluating that case, we believe it may have a narrower impact than initially described and, therefore, generally would not impact the timing of limited approval/disapproval actions.

where the rule is unenforceable for some limited number of situations but is enforceable for the majority of situations, if the rule, as a whole, strengthens the SIP.

The disapproval coinciding with (or following) the limited approval also starts the sanctions and FIP clocks discussed above. With the limited approval EPA may or may not have a commitment from the State to correct the deficiency. The EPA may choose to use the limited approval approach (instead of conditional approval) in the case where the State has submitted a commitment as part of a rule but EPA has reason to believe that the State will not be able to meet the commitment (as discussed below). Where a limited approval/disapproval approach is taken, the notice of proposed rulemaking (NPR) should clearly identify which requirements have not been met and what action would be required on the part of the State to meet those requirements.

Conditional Approval

Under section 110(k)(4) of the Act EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures within 1 year from the date of approval. If the State fails to meet its commitment within the 1-year period, the approval is treated as a disapproval. We expect that conditional approvals will be used only in rare situations that merit special consideration. We will evaluate specific types of SIP submittals [e.g., reasonably available control technology (RACT) catch-ups, particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10) SIP'S] to determine whether certain elements of that type of submittal, or that type of submittal as a whole, merit conditional approval. For this reason and to ensure consistency, Regions should not use conditional approvals without input from Headquarters as to whether such an approach is appropriate. Furthermore, as any statutory deadline approaches, we may issue guidance regarding the appropriate use of conditional approval with respect to that specific requirement.

once a determination has been made that a specific type of submittal can be considered for conditional approval, Regions must make a determination of whether an individual State submittal should be conditionally approved. The first consideration should be whether the State has made (or agrees to make) a commitment to adopt specific enforceable measures within 1 year of EPA approval. The commitment must be made in writing

by the party responsible for adopting the specified measures before the plan is conditionally approved, and the commitment must be submitted by the State.[See footnote 2]

In addition, to the extent that the commitment materially alters the existing rule (in respects that the public could not reasonably have anticipated would result from the public review of the existing rule), or is a commitment to adopt an entire rule or set of rules, the commitment must be a SIP revision submittal by the State. In many cases, the determination of whether the commitment materially alters the underlying rule may be based on whether a similar issue was raised during the earlier State proceedings on the submitted rule. In general, each commitment will need to be examined to determine whether it materially alters the submitted rule. As with any SIP revision, in order for EPA to accept the commitment as a SIP revision, the State must have provided notice and public hearing on the submitted commitment. However, EPA has the discretion to parallel process commitments and in limited circumstances may propose conditional approval of the commitment and allow the State process to proceed on a parallel track.

As a general matter, the greater the extent to which a submittal is lacking in important plan elements, the less appropriate the use of conditional approval may be. It should be noted, however, that there may be circumstances under which EPA would accept a SIP revision consisting of a commitment only (without specifically adopted rules) as a candidate for conditional approval. In such cases, the commitment should also be accompanied by a work plan detailing any specific measures to be adopted, the steps that will be taken to adopt the measures, and the schedule for adoption of those measures. As stated earlier, a submittal that consists entirely of a commitment will be considered a SIP revision that is subject to the State process for submitting SIP revisions, e.g., notice and a public hearing.

Where the submittal contains specifically adopted rules that need some revisions or corrections to be fully-approvable, the commitment may not need to be as comprehensive. The commitment should, however, be as explicit as possible concerning the measures that will be adopted, the steps that will be taken to adopt the measures, and the schedule for adoption of those measures.

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Footnote 2. Although the commitment must identify the measures to be adopted and contain a schedule for adopting such measures, it is not necessary for the commitment itself to be enforceable in a State court.

Because the conditional approval relies on a commitment from the State, EPA would need some level of confidence that the State would be able to meet such a commitment. In making a determination as to whether a State could reasonably be expected to meet its commitment, EPA would need to consider a number of factors such as:

- the amount of technical work necessary for the measures to be adopted;
- whether adoption of the measures is expected to be controversial;
- the average length of the State adoption process;
- how far along in the process the State is; and
- the State's past track record.

It should be noted that these are only some of the factors that should be considered. Each Region, in making a determination regarding the credibility of the State's commitment, may have to look at a number of other factors. The Region should clearly explain, either in the NPR or in a technical support document, the rationale for these determinations.

In addition to the determination of whether the State's commitment is credible, the Region must make a determination as to whether it is appropriate to conditionally approve a revision on the merits of that revision. Conditional approval might typically be used in the same types of situations as the limited approval. As with the limited approval, one of the main advantages of the conditional approval approach is to make the State submittal (where the submittal contains control requirements and not just a commitment to adopt enforceable measures) federally enforceable and to increase its potential to achieve additional reductions. Because the conditionally approved submittal will become a part of the SIP, the Region should be certain that the approval of the commitment will hot weaken the existing SIP. The Region may also want to consider when the plan (or plan element) that has been submitted was due.

The NPR for a conditional approval should clearly identify which requirements are the subject of the commitment and, therefore, have not been met. In addition, both the NPR and the State's commitment should clearly identify what action is required on the part of the State. Unlike the limited approval/disapproval, the conditional approval does not immediately start the sanctions and FIP clocks. These clocks start if and when the approval is converted to a disapproval.

There are at least two ways that the conditional approval

may be converted to a disapproval.[See footnote 3] First, if the State fails to adopt and submit the specified measures by the end of 1 year (from the final conditional approval), or fails to submit anything at all, EPA will have to issue a finding of disapproval but will not have to propose the disapproval. That is because in the original proposed and final conditional approval, EPA will have provided notice and an opportunity for comment on the fact that EPA would directly make the finding of disapproval (by letter) if the State failed to submit anything.[See footnote 4] Therefore, at the end of 1 year from the conditional approval, the Regional Administrator (RA) will send a letter to the State finding that it had failed to meet its commitment and that the SIP submittal is disapproved. The 18-month clock for sanctions and the 2-year clock for a FIP start as of the date of the letter. Subsequently, a notice to that effect will be published in the Federal Register, and appropriate language will be inserted in the Code of Federal Regulations. Similarly, if EPA receives a submittal addressing the

commitment but determines that the submittal is incomplete, the RA will send a letter to the State making such a finding. As with the failure to submit, the sanctions and FIP clocks will begin as of the date of the finding letter.

Second, where the State does make a complete submittal by the end of the 1-year period, EPA will have to evaluate that submittal to determine if it may be approved and take final action on the submittal within 12 months after the date EPA determines the submittal is complete. If the submittal does not adequately address the deficiencies that were the subject of the conditional approval, and is therefore not approvable, EPA will have to go through notice-and-comment rulemaking to disapprove the submittal. The 18-month clock for sanctions and the 2-year clock for a FIP start as of the date of final disapproval. If EPA determines that the rule is approvable, EPA will propose approval of the rule. In either instance, whether EPA finally approves or disapproves the rule, the conditional approval remains in effect until EPA takes its final action.

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Footnote 3. It should be noted that this disapproval can be a limited approval/disapproval. In some cases, the Regions may want to use such an approach to retain the enforceability of control measures. The NPR should indicate if this approach is planned.

Footnote 4. To provide for this contingency, in the final conditional approval, EPA would need to provide, for example, "If the State fails to make a submittal or makes only an incomplete submittal during the time period for submittal of the rule, EPA will issue a letter to the State which converts the conditional approval to a disapproval."

It should be noted that EPA will conditionally approve a certain rule only once. Subsequent submittals of the same rule that attempt to correct the same specifically identified problems will not be eligible for conditional approval.

Sanctions and FIP Requirements

Actions that Trigger the Sanctions and FIP Requirements

The actions EPA has the authority to take under the sanctions and FIP provisions of the Act correspond to the different steps EPA must follow as it reviews and processes SIP submittals. As discussed previously, the Act in section 179[See footnote 5] requires EPA to impose sanctions based on four types of actions (findings[See footnote 6]) provided in section 179(a):

(1) a finding that a State has failed to submit a SIP, a SIP element,[See footnote 7] or has submitted a SIP or SIP element that does not satisfy the completeness criteria;

(2) that EPA disapproval of a SIP submission for A nonattainment area based on its failure to meet one or more elements required by the Act;

(3) a determination that the State has not made any other submission, has made an inadequate submission (as required by the Act), or that EPA disapproves such a submission; or

(4) a finding that a requirement of an approved plan is not being implemented.

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Footnote 5. Section 110(m) grants EPA broad authority to apply either sanction listed in section 179(b) " . . . at any time (or at any time after) a finding . . . " under section 179(a) with respect to any portion of the State, with certain exceptions. This memorandum is intended to address the application of sanctions under section 179. The section 179 sanctions apply only to the area for which a finding has been made.

Footnote 6. Although subsections (1)-(4) refer to findings, determinations and disapprovals, for simplicity these four actions will be referred to as "findings."

Footnote 7. Since EPA does not intend to issue a list of such elements per

se, to ensure that such findings are consistently applied, findings of failure to submit SIP elements should be decided on a case-by-case basis in conjunction with Headquarters. The basis for the finding should be clear and well-supported. 9

Under section 110(c)(1), EPA is required to promulgate a FIP based on two types of findings:[See footnote 8]

(1) a finding that a State has failed to make a required submittal or that a submittal does not satisfy the minimum completeness criteria established under section 110(k)(1)(A), or

(2) the EPA disapproval of a SIP submittal in whole or in part.

The Sanctions and FIP Clocks

Although EPA may make any of the findings discussed above to trigger the 179(a) sanctions and 110(c)(1) FIP requirements, these findings do not require the immediate imposition of sanctions or promulgation of a FIP. Instead the Act provides a "clock" for sanctions and FIP'S. For plan submittals required under Part D or in response to a SIP call, section I 179(a) allows for up to 18 months for the State to correct the deficiency that is the subject of a finding or disapproval before EPA is required to impose sanctions. Section 110(c)(1) provides for up to 2 years for the State to correct the deficiency and for EPA to approve a new submittal before EPA is obligated to promulgate a FIP.

The Administrator has delegated the authority to make findings of failure to submit to the RA's. The findings are made via letters from the RA's to State governors or other State officers to whom authority has been delegated. The letter itself triggers the sanctions and FIP clocks. For disapprovals, the Federal Register notice in which EPA takes final action triggers the sanctions and FIP clocks. Findings of nonimplementation have traditionally been processed as rulemaking actions through Headquarters. The sanctions clock will start when EPA makes a finding of nonimplementation in the Federal Register after soliciting comment on the proposal (the FIP clock is not triggered by such a finding). Although the findings of failure to submit and SIP disapproval start both the sanctions and FIP clocks, what is required to stop the clocks differs; therefore, they are discussed separately. Note that in some cases the sanctions clock may be stopped while EPA remains under an obligation to promulgate a FIP.

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Footnote 8. Since the deficiency is a failure to implement after a State has submitted a plan and EPA has approved it, it is unnecessary for this finding to trigger a requirement that EPA develop the required rule (i.e., prepare a FIP) and section 110(c)(1) does not require it.

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Sanctions Clock

Under section 179(a), in order to stop the sanctions clock, the State must correct the "deficiency" prompting the finding. The EPA must apply one of the two sanctions available under section 179(b) within 18 months after the date of the finding and both sanctions at 24 months, unless the deficiency has been corrected. Section 179(a) also requires EPA to apply both sanctions after 18 months if EPA finds a lack of good faith on the part of the State.

Attachment 3 provides seven scenarios illustrating how the sanctions clock operates, including examples of what constitutes a deficiency correction (and hence a stopping of the clock). In brief, for purposes of the sanctions clock, findings of failure to submit plans or complete plans are corrected when EPA finds the submittal complete[See footnote 9] [although the FIP clock, is still running (see FIP clock discussion)] and disapprovals are corrected when EPA takes final rulemaking action approving the plan. In addition, findings of nonimplementation are corrected when EPA makes a finding in the Federal Register that the State is now implementing that provision.

FIP Clock

Under the FIP provisions, either a SIP must be approved or a FIP must promulgated within 2 years of one of the two findings discussed above. In other words, EPA must approve the State submittal in order to stop the FIP clock. Where the sanctions and FIP clocks were started by EPA disapproval of a plan, the clocks will run concurrently. In this case, to correct the deficiency for purposes of the sanctions clock, the State must make a submittal which EPA finds approvable. Such a determination is not made until EPA issues a final approval of the plan. Final approval of a plan is also what is needed to stop the FIP clock. Attachment 3 provides seven scenarios of how the FIP clock operates.

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Footnote 9. Where EPA made a finding of failure to submit and subsequently finds that the State has made a complete submittal for the plan or plan element that was the subject of the finding, the letter that makes the finding of completeness will notify the State that the sanctions clock is stopped as of the date of that letter. The Region should periodically announce any such findings that represent corrections of failure to submit in the Federal Register.

Available Sanctions

For plan submittals required under Part D or in response to a SIP call, if the State does not correct the specific deficiency within the 18-month period allowed under section 179(a), EPA must apply at least one of the two sanctions available under section 179(b)[See footnote 10] as described:

(1) Highway funding sanctions. The EPA may impose a prohibition on the approval by the Secretary of Transportation of certain projects, or the awarding of certain grants.

(2) Offset sanctions. A ratio of at least 2-to-1 will be required for emissions reductions within the nonattainment area to offset emissions from new or modified major facilities (as required under section 173).

Regions should determine which of the sanctions will be applied at the 18- and 24-month milestones on a case-by-case basis. As discussed previously, EPA must apply both sanctions at the 18-month mark if it finds there is a lack of good faith effort. Such a determination should be made on a case-by-case basis in consultation with Headquarters. In addition, once one of the sanctions has been imposed, EPA must impose the second sanctions if the deficiency has not been corrected within 6 months (regardless of the State's efforts). Headquarters will issue a proposal of the sanctions and the Regional Office will issue the final rule imposing sanctions.

Conclusion

General comments on this memorandum should be directed to Pam Johnson of the Regional Operations Branch at (919) 541-5270. Comments related specifically to ozone or carbon monoxide should be directed to Carla Oldham at (919) 541-3347. Comments related to particulate matter, sulfur dioxide, or lead should be directed to Chris Stoneman at (919) 541-0823.

cc: Regional Air Counsels, Regions I-X
Chief, Air Programs Branch, Regions I-X
Jane Armstrong, OMS (Ann Arbor)
William Becker, STAPPA/ALAPCO
Denise Devoe, OAQPS (ANR-443)

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Footnote 10. In addition, section 179(a) provides for an air pollution grant sanction that applies to grants EPA may award under section 105. However, since it is not a sanction provided under section 179(b), it is not one of the sanctions EPA must impose after the 18-month period.

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Example 1

A State submits a SIP revision containing four rules: (1) control requirements for bulk gasoline plants, (2) control requirements for gasoline dispensing facilities (Stage I), (3) leak detection requirements for gasoline tanks trucks, and (4) test methods that apply to these three rules. The EPA review of the rules shows that all of the rules except the Stage I rule meet the applicable requirements of the Act. The Stage I rule fails to require submerged fill loading for all storage tanks. This is inconsistent with EPA's RACT guidance and the State has failed to propose an alternative that it has demonstrated is RACT for the applicable sources.

Partial Approval

Under the partial approval option, EPA can approve the rules for bulk terminals and tank truck leaks, approve the test methods, and disapprove the Stage I rule. These rules are separable from the Stage I rule. Disapproval of the Stage I rule does not affect the stringency of the other three rules. Therefore, the other three rules may be approved under this provision. However, the submittal as a whole would only be partially approved.

Limited Approval of Stage I Rule

Under the limited approval approach, EPA could approve the Stage I rule as being an improvement over what is currently in the SIP and, at the same time or within a reasonable time after the approval (but no later than 12 months after the submittal is complete), disapprove the rule because it does not represent RACT. The sanctions and FIP clocks would start upon the final disapproval of the rule.

Conditional Approval

Alternatively, EPA could conditionally approve the Stage I rule if the State committed to revise the rule, within 1 year of the conditional approval, to require submerged fill loading. If the State then failed to make such a revision, EPA would issue a finding converting the conditional approval to a disapproval.

Example 2

If in example 1 the first three rules (containing control requirements) are all approvable but the fourth (containing the test methods) is either deficient or has not been submitted, then the submittal would have to be handled differently. Because a test method is critical in determining the stringency of a control requirement and is needed for the requirements to be enforceable, these rules cannot be considered separable and, therefore, partial approval would not be an option. In addition, because the control requirements will not be enforceable without a test method, it would not be appropriate to use either the limited or conditional approval approach. Example 3

A State submits a SIP revision that contains four PM-10 rules, two for controlling emissions of fugitive dust and two for the control of residential wood combustion. The rules represent reasonable available control measures (RACM) and include (1) paving or stabilizing unpaved roads, (2) developing a traffic reduction plan for unpaved roads, (3) a mandatory episode curtailment program for residential wood combustion, and (4) encouraging changeover to new source performance standards and wood stoves. The third rule is deficient in that it does not provide a communication strategy on which the curtailment program is dependent.

Partial Approval

The EPA may approve the three rules which satisfy RACM but disapprove the episode curtailment program as failing to meet the RACM requirement. These rules are separable because disapproval of the curtailment program will not have any effect on the stringency or enforceability of the remaining rules.

Limited Approval

The EPA may approve the episode curtailment plan as strengthening the SIP by providing enforceable measures in a SIP which currently has no curtailment program. At the same time or within a reasonable time after the approval (but no later than 12 months after the submittal is complete), EPA must disapprove the rule as not representing RACM. Final disapproval of the rule would start the sanctions and FIP clocks.

Conditional Approval

The EPA may conditionally approve the rule if the State submits a commitment to submit a revised rule within 1 year of the approval. If the State then failed to make such a revision, EPA would issue a finding converting the conditional approval to a disapproval.

Attachment 2

Type of Approval	Separability	Commitment	Act Requirements	SIP Strengthening
Partial	rules must be separable	no commitment necessary	part to be approved must meet all applicable requirements	part to be approved must strengthen the SIP
Limited	deficient portion of submittal is not separable	no commitment necessary	does not have to meet all applicable requirements	submittal as a whole must strengthen the SIP
Conditional	deficient portion of submittal is not separable	State must commit to correct within 1 year	does not have to meet all applicable requirements	submittal as a whole must strengthen the SIP

Attachment 3: Sanctions and FIP Clocks Scenarios

Scenario 1: The EPA receives a SIP and finds it incomplete prior to the statutory due date of the SIP.

Although a finding that the State submitted an incomplete SIP is one of the section 179(a) findings, the sanctions and FIP clocks will not begin to run until after a submittal is due. This is because the finding must be based on the failure to submit a complete required SIP or SIP element and the submittal is not required until it is due under the statute. If a SIP submitted prior to a due date is still incomplete by the due date, then EPA will notify the State by letter that the plan remains incomplete and that the 18-month sanctions clock and the 2-year FIP clock have started.

Scenario 2: The EPA receives a SIP and finds it incomplete on or after the statutory due date of the SIP.

If EPA receives a SIP and finds it incomplete pursuant to section 110(k) on or after the statutory due date of the SIP, then, as in scenario 1, the State has failed to make a complete submittal under section 179(a). The EPA will notify the State by letter that the plan is incomplete and that the 18-month sanctions clock and the 2-year FIP clock have started.

Scenario 3: The EPA receives no submittal at the due date.

If EPA receives no submittal from a State to meet a statutory due date, then it may make a finding of failure to submit under section 179(a)(1), triggering the 18-month sanctions clock and the 2-year FIP clock.

Scenario 4: After the due date, EPA receives a SIP for which it originally made a finding of failure to submit.

Upon receiving the plan, the sanctions clock will continue to run during the completeness review and be stopped if EPA finds the plan complete and continue if EPA finds the plan incomplete. If the 18 months elapse during the time EPA is doing its completeness review, EPA will not impose sanctions unless it determines the plan incomplete. If sanctions have been imposed prior to the State's submittal, the sanctions will remain in place until EPA determines the submittal complete.

The FIP clock continues to run while EPA makes its completeness determination.

Scenario 5: The EPA originally makes a finding of failure to submit, then receives a SIP, finds it complete, but disapproves it in final rulemaking.

Upon a determination that the SIP is complete, the State corrects the deficiency that prompted the finding of nonsubmittal and the sanctions clock stops. A new sanctions clock will start upon the final SIP disapproval rulemaking. The new sanctions clock will not stop until EPA has taken final action to approve the revised SIP submittal.

Even after the submittal is determined to be complete, EPA remains under obligation to promulgate a FIP. Therefore, the disapproval of the SIP does not start a new FIP clock.

Scenario 6: The EPA originally makes a finding of failure to submit, then receives a SIP, finds it complete, and approves it in final rulemaking.

Upon a determination that the SIP is complete, the State corrects the deficiency prompting the finding of nonsubmittal and the sanctions clock stops. The EPA remains under obligation to promulgate a FIP until EPA takes final rulemaking action to approve the SIP.

Scenario 7: The EPA finds that a State has failed to implement a SIP or SIP provision.

The EPA will make a finding of nonimplementation in the Federal Register after soliciting comment on the proposal. The sanctions clock will start upon EPA taking final action and stop when EPA makes a finding in the Federal Register after notice-and-comment rulemaking that the State has corrected the deficiency that prompted the finding. A finding of nonimplementation does not start a FIP clock.