



February 1, 2012

Ms. Gina McCarthy
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, DC 20760

Dear Ms. McCarthy,

The Western States Air Resource (WESTAR) Council appreciates the U.S. Environmental Protection Agency's (EPA) considerable efforts to develop guidance documents to help states prepare their Clean Air Act (CAA) § 110(a)(2) State Implementation Plans (SIPs). However, WESTAR would like to bring to your attention our member states' mounting frustration with recent guidance documents and EPA interpretation of the infrastructure SIP requirements under CAA § 110(a)(2). We also suggest specific improvements to infrastructure SIPs guidance and the approval process.

Timing

The three-year clock for states to submit infrastructure SIPs begins with the promulgation of a new or revised National Ambient Air Quality Standard (NAAQS). EPA has consistently not released guidance for these infrastructure SIP submittals until right before or after this three-year deadline. The most recent infrastructure SIP guidance for lead was issued on October 14, 2011, one day before the lead infrastructure SIPs were due. The infrastructure SIP guidance for the 2006, PM_{2.5} NAAQS was issued on September 25, 2009, four days after infrastructure SIPs were due. This delay in issuing final guidance forces states to either submit infrastructure SIPs late or to move forward without needed EPA guidance. For most states, procedural and notice requirements for SIP revisions necessitate a minimum of six months to a year lead time prior to the date of adoption by the administrative board or legislature. The Western states urge EPA to make draft guidance available for comment at the same time a new or revised NAAQS is promulgated and issue final guidance at least two years prior to the date infrastructure SIPs are due. This lead time is especially important in instances where states will have to develop new regulations.

Interpretation of 110(a)(2) Requirements

EPA's recent infrastructure SIP guidance documents for lead and sulfur dioxide (SO₂) employed an overly broad and simplistic application of the elements of the CAA § 110 to the infrastructure SIP, without regard to the particular NAAQS at issue.

This is in contrast to, for example, EPA's recent approval of New Mexico's infrastructure SIP for the 1997 ozone and fine particle NAAQS, in which EPA provided a well-reasoned and thorough explanation of the need to "determine which provisions of section 110(a)(2) may be applicable for a given SIP submission" (76 Fed. Reg. 41698, 41700, July 15, 2011). EPA further explained that "states can establish that they have the basic SIP structure, not withstanding that there may be deficiencies within the existing SIP." As examples of deficiencies that do not affect infrastructure SIP approvability, EPA points to excess emissions provisions for start-up, shut down, and maintenance; minor source NSR provisions; and, NSR Reform regulations.

However, the guidance for the recent infrastructure SIPs does not reflect this same reasonable interpretation of the Act. Instead, it goes far beyond requiring that a state demonstrate it has the capacity and basic regulatory structure in place. An example of this over-reaching application of the CAA § 110 infrastructure requirements is apparent in the recent guidance requirements for 110(a)(2)(D) regarding interstate transport. The intent of this provision is to establish that states have the necessary provisions in their SIPs to address the requirements under 110(a)(2)(D), not to develop elaborate and resource intensive analyses to justify the approvability and legitimacy of a state's programs. Any additional work beyond establishing that adequate provisions are in place should be at the discretion of the states, not mandated by federal guidance.

Similarly, it is not clear why greenhouse gas permitting was included in the PSD discussion for the lead infrastructure SIP, as compared to the applicability of the PSD program to criteria pollutants. This appears to be aimed at avoiding the inadvertent approval by EPA of PSD programs through action on a state lead infrastructure SIP. If so, this is misplaced. The approvability of a state PSD program is a separate matter from the approvability of an infrastructure SIP. If a portion of the PSD program is not approvable for failure to comply with the greenhouse gas tailoring rule, then EPA may partially disapprove the PSD program, and partially disapprove the infrastructure SIP to the extent it fails to cover sources which would be brought under PSD consideration due to greenhouse gas emissions. The lead infrastructure SIP guidance implies that the approval of a state PSD program, rather than the infrastructure SIP, is at stake. This unnecessarily muddies the relationship between lead infrastructure SIP approvability and PSD program approvability.

Interstate Transport

We strongly encourage EPA to work with states to clarify the intent of CAA § 110(a) (2) (D) as it relates to interstate transport. As discussed above, WESTAR believes that the intent of CAA § 110(a)(2)(D) is to establish that states have the necessary provisions and capacity in their SIPs to address interstate transport of pollution, not to develop elaborate and resource intensive analyses to evaluate potential interstate impacts on attainment and maintenance of NAAQS. That kind of analysis is achieved under other provisions of the Clean Air Act as needed. If EPA believes that some type of analysis is necessary, we strongly encourage EPA to work with states to clarify and agree on the scope and rigor of analysis necessary and adequate to address CAA § 110(a)(2)(D).

Western states will need additional assistance and funding support from EPA if interstate analysis is required under CAA § 110(a)(2)(D). Since the Western states are not covered by the Cross-State Air Pollution Rule (CSAPR) or its predecessor the Clean Air Interstate Rule (CAIR), they do not have the same federally produced air dispersion modeling results afforded to the Eastern and Central states for evaluating interstate transport. If interstate analysis is required, western states will need EPA to support regional modeling efforts for those states not covered under CSAPR.

General Comments and Suggested Improvements

The Western states understand the necessity of evaluating their programs to ensure that they have the basic authorities and capacities to implement, maintain and enforce a new or revised NAAQS. However, EPA's most recent interpretation of CAA § 110(a)(2) goes far beyond this by requiring infrastructure SIPs to include a justification for the overall approvability of all provisions under CAA § 110(a)(2). This new interpretation of the requirements is excessive and inconsistent with previous interpretations for these types of SIP submittals. The more complex and onerous these requirements are for states, the more time consuming and resource intensive they become, taking time away from the development of other CAA requirements, and potentially hindering the protection of public health and the environment.

As a means of assisting the Western states develop the infrastructure SIP, it would be beneficial for EPA to simplify, rather than create an overly burdensome process that does not further enhance a state's ability to implement, maintain and enforce a NAAQS. Some suggestions for EPA to simplify this process are to:

- Provide a simple checklist for use by states in the development of their infrastructure SIPs;
- Issue draft implementation guidance upon promulgation of a revised NAAQS;
- Issue final implementation guidance at least two years from the due date of a NAAQS infrastructure SIP;
- Require one basic, overarching infrastructure SIP for all pollutants that can be updated as needed when new NAAQS provisions are promulgated by EPA; and,
- Base approvability of an infrastructure SIP on a state's ability to provide a basic demonstration of their authority to implement, maintain, and enforce a NAAQS.

Conclusion

In the context of a State Implementation Plan, the 'infrastructure' component is a demonstration that the state possesses the necessary authority and resources to successfully implement the NAAQS. Determining the adequacy of an infrastructure SIP should not include regulating specific aspects of state air programs. This should be dealt with through SIP calls or relevant federal regulations adopted by the states and not through infrastructure SIPs. The onerous, changing, and at times confusing path that EPA is currently heading down is contrary to the intent of an infrastructure SIP. The Western states urge EPA to reassess the intended purpose of CAA § 110(a)(2) SIPs and incorporate the reasonableness that was utilized in past assessments of state infrastructure SIPs.

Sincerely,



for
David Collier, President
Western States Air Resources Council

cc: Bill Becker, NACAA
Steve Brown, ECOS