

9.0 TRANSPORT SECTION 110

9.1 Background

42 U.S.C. § 7410(a)(2)(D)(i) (CAA 110(a)(2)(D)(i)) (hereafter referred to as Section 110 (a)(2)(D)(i) and commonly referred to as the transport State Implementation Plan (SIP) requirement) requires that each state's SIP contain adequate provisions prohibiting any source, or other type of emissions activity, within the State from emitting any air pollutants in amounts that will:

- 1) Contribute significantly to nonattainment of the National Ambient Air Quality Standards (NAAQS) for areas in another state or interfere with the maintenance of the NAAQS by another state;
- 2) Interfere with measures required to meet the implementation plan for any other state related to Prevention of Significant Deterioration (PSD); or,
- 3) Interfere with measures required to meet the implementation plan for any other state related to Regional Haze and Visibility.

On April 25, 2005, the United States Environmental Protection Agency (USEPA) issued a finding¹ that all 50 states failed to submit SIPs to satisfy the requirements of Section 110 (a)(2)(D)(i). On August 11, 2006, the USEPA issued guidance² (hereafter referred to as the USEPA's transport guidance) on what states should submit in order to comply with Section 110 (a)(2)(D)(i). On December 22, 2006, the NJDEP sent the USEPA a letter outlining how New Jersey planned to address the requirements outlined in that guidance.³ The remainder of this chapter reiterates that plan as it pertains to the 8-hour ozone NAAQS, and provides updates on the State's progress in addressing interstate transport of 8-hour ozone-related emissions.

9.2 Significant Contribution to Nonattainment, or Interference with Maintenance, of a NAAQS in Another State

The USEPA's analysis in support of the Clean Air Interstate Rule (CAIR)⁴ shows that New Jersey significantly contributes to ozone nonattainment in the following states:

- Connecticut;
- New York;
- Pennsylvania; and,
- Rhode Island.

¹ 70 Fed. Reg., 21147-21151, (April 25, 2005).

² USEPA. Guidance for State Plan Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards. United States Environmental Protection Agency, August 11, 2006.

³ Letter from NJDEP Commissioner Lisa P. Jackson to USEPA Regional Administrator Steinberg dated December 22, 2006. The letter is posted on the NJDEP's website at <http://www.state.nj.us/dep/baqp/sip/siprevs.htm>.

⁴ USEPA. Technical Support Document for the Final Clean Air Interstate Rule Air Quality Modeling, Air Quality Modeling Analyses -Appendix G, 8-Hour Contributions to Each Nonattainment County in 2010. United States Environmental Protection Agency Office of Air Quality Planning and Standards, Research Triangle Park, NC, March 2005.

The USEPA's transport guidance allows states that are subject to requirements of the CAIR to satisfy the requirements of Section 110 (a)(2)(D)(i) through submittal of a CAIR SIP or reliance of the CAIR Federal Implementation Plan (FIP).

New Jersey proposed an abbreviated CAIR SIP on February 5, 2007, that complies with CAIR requirements. As part of this proposal, New Jersey stated that the CAIR proposal also served to partially address the transport requirement, and took that action through the public process. Based on the USEPA's guidance, this action by New Jersey satisfies the first of the requirements of Section 110 (a)(2)(D)(i). However, New Jersey remains concerned that the implementation of CAIR alone will not be sufficient to address interstate transport issues, especially for the Northeastern and Mid-Atlantic United States. According to 2010 CAIR modeling, between 26 and 82 percent (depending on the county in question) of New Jersey's 8-hour ozone is attributed to transported emissions. In addition, CAIR focuses solely on Electric Generating Units (EGUs), and does not address interstate transport of emissions from other sectors (non-EGU, mobile, area).

In light of these concerns, New Jersey intends to implement additional strategies to address the transport of ozone precursor emissions both to and from New Jersey. As part of a regional effort, New Jersey commits to:

- Continue to meet its obligations under the NO_x SIP Call, while working to implement an allocation mechanism that encourage energy efficiency for New Jersey sources in the federal CAIR program;
- Develop multi-pollutant (oxides of nitrogen (NO_x), sulfur dioxide (SO₂) and particulate matter (PM)) performance standards providing additional emission reductions for Electric Generating Units;
- Update its Reasonably Available Control Technology (RACT) rules to address both 8-hour ozone and fine particulate matter (PM_{2.5}) precursors;
- Review the USEPA's revised and new Control Technique Guidelines (CTGs), as they are released, and update State rules where New Jersey has affected sources;
- Continue to implement the Low Emission Vehicle (LEV) program;
- Develop rules and/or other measures to address emissions on High Electrical Demand Days (HEDD); and,
- Propose additional requirements for consumer product formulations and portable fuel containers

All actions which New Jersey determines are necessary to attain and maintain the NAAQS in New Jersey, and to maintain the NAAQS in neighboring states, will be proposed and included as part of New Jersey's SIP. In accordance with the New Jersey Administrative Procedures Act (APA) (N.J.S.A. 52:14B-1 et. seq.) and the Air Pollution Control Act (APCA) (N.J.S.A. 26:2C-1 et. seq.), this proposal will be taken through public process at that time and New Jersey commits to propose the measures by no later than November 2007 and adopt by May 2008.

The USEPA's analysis in support of the CAIR further indicates that the following states significantly contribute to ozone nonattainment in New Jersey or in one of its associated multi-state nonattainment areas:

- Connecticut;
- Delaware;
- Maryland;
- Michigan;
- North Carolina;
- New York;
- Ohio;
- Pennsylvania;
- Virginia; and,
- West Virginia.

The emission reductions from large stationary sources through the NO_x SIP Call demonstrate significant progress in reducing the transport of ozone and its precursors in the eastern United States. The demonstration of attainment in Chapter 5 relies on the implementation of additional control measures by upwind states. These measures include new or additional regulations on adhesives and sealants, asphalt paving, asphalt production, cement kilns, consumer products, glass furnaces, Industrial/Commercial/Institutional (ICI) boilers, and portable fuel containers. Because New Jersey has demonstrated that it needs the emissions reductions from these other states in order to meet its attainment obligations, the State requests (see Section 13.3.2) that the USEPA, in reviewing the attainment demonstrations and all other SIP revisions from other states, take into consideration the other states' impact on New Jersey's attainment obligations, and insure that other states are doing what is needed for New Jersey's associated multi-state nonattainment areas to reach attainment as soon as practicable.

9.3 Prevention of Significant Deterioration/Nonattainment New Source Review (PSD/NNSR) Requirement

The USEPA's transport guidance requires states to confirm that major sources currently subject to PSD and NNSR permitting programs also apply to the 8-hour ozone standard. Since the entire State of New Jersey was designated as nonattainment for the 1-hour ozone NAAQS, New Jersey already has a NNSR permitting program addressing the ozone precursors (VOC and NO_x). Since the entire State continues to be in nonattainment for the 8-hour ozone NAAQS, the existing ozone NNSR program remains in effect and applies to the 8-hour ozone NAAQS for major stationary sources. Changes to New Jersey's NNSR rules are not necessary for ozone. New Jersey intends to retain the more stringent NNSR requirements developed for 1-hour ozone nonattainment. This will avoid backsliding and continue air quality improvement from NNSR.

On December 29, 2005, the NJDEP submitted an equivalency determination documenting the current New Jersey NNSR program is at least as stringent than the Federal program, including lower applicability levels and higher offset rates than the

federal rules. These more stringent requirements are part of New Jersey's effort to reduce transported air pollution.

9.4 The Visibility Requirement

The ozone precursors, particularly NO_x, also contribute to the formation of fine particulate matter, the main component of regional haze. Therefore, the 8-hour ozone SIP impacts the visibility requirements of Section 110(a)(2)(D)(i). However, the USEPA's guidance relieves New Jersey of this Section 110(a)(2)(D)(i) requirement regarding visibility until such time as that New Jersey submits its Regional Haze SIP, due to the USEPA in December of 2007. New Jersey, in the context of setting the 2018 Reasonable Progress goal through a consultative process, will assess whether there is any interference by impacting states with measures in the implementation plan to prevent significant deterioration of air quality or to protect visibility at the Brigantine Wilderness Area in the Edwin B. Forsythe National Wildlife Refuge. As with all of New Jersey's SIP proposals, a public comment period on the Regional Haze SIP, including the Section 110(a)(2)(D) requirement portion, will allow interested parties to provide comment on the actions presented in the proposal.

9.5 Conclusion

Addressing transported emissions, both to and from the State, is critical for New Jersey's multistate nonattainment areas to attain and maintain the health-based ambient air quality standards. New Jersey is complying with the USEPA's guidance regarding interstate transport as it relates to the 8-hour ozone NAAQS and is doing more to insure that it is not interfering with the ability of its neighboring states to attain and maintain that standard. While many of New Jersey's existing requirements are already more stringent than the existing pollution control requirements in the neighboring upwind states, New Jersey further commits to consider any additional measures, beyond those already in place, implemented by the neighboring upwind states, if they are more stringent than our current actions. New Jersey also encourages the USEPA to take action where states are preempted from action. New Jersey relies on the USEPA to ensure sufficient progress in securing upwind emission reductions to provide for expeditious attainment of the 8-hour ozone NAAQS.