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EPA Docket Center
Environmental Protection Agency
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Washington, DC 20460-0001
Attn: Docket ID No. OGC-2005-00004
(submitted via e-mail to oei.docket@epa.gov)

To Whom It May Concern:

The State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) are writing to submit these comments on the proposed consent decree referenced in 70 Federal Register 15623 (March 28, 2005). The proposed consent decree would settle a lawsuit filed by Environmental Defense and American Lung Association to compel EPA to make a determination as to whether each state has submitted state implementation plans (SIPs) required by section 110(a) of the Clean Air Act for the national ambient air quality standards (NAAQS) for 8-hour ozone and for fine particulate matter (PM$_{2.5}$). STAPPA and ALAPCO write to support the deadlines established in the consent decree for EPA to make the required determination under section 110(k)(1)(B) of the Act.

Background

Section 110(a)(1) of the Act provides that each state shall adopt and submit to EPA a SIP within three years after promulgation or revision of a NAAQS. EPA promulgated the 8-hour ozone and PM$_{2.5}$ NAAQS in 1997. These NAAQS were challenged in court but were ultimately upheld in 2001 (American Trucking Associations, Inc., et. al., v. EPA (D.C. Circuit Court of Appeals, No. 97-1440, March 26, 2001)). Section 110(a)(2) enumerates the general provisions that a SIP must include, such as containing adequate provisions prohibiting any source or other type of emissions activity within a state from emitting any air pollutant in amounts that will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any NAAQS (section 110(a)(2)(D)(i)(I)). Other sections of the Act provide greater detail on SIP requirements for nonattainment areas. In particular, Title I, Part D, Subpart 1 lists the plan requirements for nonattainment areas in general, and Title I, Part D, Subpart 2 contains additional requirements for certain ozone nonattainment areas. EPA has yet to issue full guidance on implementation of the 8-hour ozone and PM$_{2.5}$ NAAQS. (The Supreme Court declared EPA’s initial 8-hour ozone implementation regulation unlawful in Whitman v. American Trucking...
Designations of 8-hour ozone nonattainment areas were finalized on June 15, 2004, and designations of PM$_{2.5}$ nonattainment areas were finalized April 5, 2005. (69 Federal Register 23858 (April 30, 2004) – 8-hour ozone designations; 70 Federal Register 944 (January 5, 2005), as modified by 70 Federal Register 19844 (April 14, 2005) – PM$_{2.5}$ designations). Accordingly, EPA has indicated that states have until June 15, 2007 to submit SIPs for 8-hour ozone nonattainment areas and section 110(a)(1) maintenance areas, and until April 5, 2008 to submit SIPs for PM$_{2.5}$ (three years) (68 Federal Register 32802, 32857 (June 2, 2003) – proposed rule for 8-hour ozone standard).

**Consent Decree**

The proposed consent decree establishes deadlines with respect to two issues: 1) a determination by EPA as to whether each state has submitted the SIP revisions required by section 110(a)(2)(D)(i) for the implementation, maintenance and enforcement of the 8-hour ozone and PM$_{2.5}$ NAAQS that meet the minimum criteria promulgated by EPA pursuant to section 110(k)(1)(A) of the Act (hereinafter “Interstate Transport Determination”); and 2) a notice of EPA’s determination pursuant to section 110(k)(1)(B) of the Act as to whether each state has submitted the remaining SIP revisions required by section 110(a)(2) of the Act for the implementation, maintenance and enforcement of the 8-hour ozone and PM$_{2.5}$ NAAQS that meet the minimum criteria promulgated by EPA pursuant to section 110(k)(1)(A) of the Act (hereinafter “EPA SIP Completeness Finding”).

The consent decree sets a deadline of March 15, 2005 for the Interstate Transport Determination. That deadline has passed. EPA published in the Federal Register on April 25, 2005, a finding that states have failed to submit SIPs to satisfy the requirements of section 110(a)(2)(D)(i) of the CAA for the 8-hour ozone and PM$_{2.5}$ NAAQS; this finding starts a two-year clock (which starts May 25, 2005) for the promulgation by EPA of a Federal Implementation Plan, unless each State submits a SIP to satisfy the section 110(a)(2)(D)(i) requirements, and EPA approves such submission prior to that time. STAPPA and ALAPCO express no opinion on this deadline since it has passed and EPA has complied with it.

For the EPA SIP Completeness Finding, the consent decree establishes a deadline of December 15, 2007, with respect to SIPs for the 8-hour ozone standard, and October 5, 2008, with respect to SIPs for the PM$_{2.5}$ standard, for the signature of a notice of the EPA SIP Completeness Finding. Section 110(k)(1)(B) provides EPA with at least 60 days, but not longer than six months, for the EPA SIP Completeness Finding. The time period in the consent decree is consistent with providing: 1) three years for states to submit 8-hour ozone SIPs and PM$_{2.5}$ SIPs following the nonattainment designations made respectively for these pollutants, 2) three years for areas that are nonattainment or maintenance for the 1-hour ozone standard and attainment/unclassifiable for the 8-hour ozone standard to submit section 110(a)(1) maintenance plans, and 3) six months for EPA to make the EPA SIP Completeness Finding – the same timeframe as provided in section 110(k)(1)(B). Accordingly, STAPPA and ALAPCO support the timelines for the EPA SIP Completeness Finding in the consent decree. STAPPA and ALAPCO note that the consent decree does not affect the 12-month period provided in section 110(k)(2) for EPA to approve, partially approve or disapprove a SIP.
While not expressly addressed in the consent decree, the 8-hour ozone and PM$_{2.5}$ implementation rules and guidance are critical to states’ writing of SIPs. STAPPA and ALAPCO urge EPA to issue phase II of the 8-hour ozone implementation rule and propose and finalize the PM$_{2.5}$ implementation rule on an expedited basis so that states can submit 8-hour ozone and PM$_{2.5}$ SIPs on a timely basis. Similarly, STAPPA and ALAPCO urge EPA to issue guidance or rules in an expedited manner to address not just the section 110(a)(2)(D)(i) requirement but other section 110(a)(2) requirements. It is important for timely submittals that all states – not just states with nonattainment areas – fully understand EPA’s expectations for section 110(a)(1) plans.

Please feel free to contact either of us or Amy Royden-Bloom of the STAPPA/ALAPCO Secretariat at 202-624-7864.

Sincerely,

Brock Nicholson
STAPPA Chair
Criteria Pollutants Committee

Lynne A. Liddington
ALAPCO Chair
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cc. Geoffrey Wilcox (via e-mail)