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**FOR FURTHER INFORMATION CONTACT:** Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562-9115 or [hofmeister.art@epa.gov](mailto:hofmeister.art@epa.gov).

**SUPPLEMENTARY INFORMATION:** The Georgia Center for Law in the Public Interest originally submitted a petition on behalf of the Sierra Club (Petitioner) to the Administrator on February 4, 2002, requesting that EPA object to a state title V operating permit issued by the EPD to Oglethorpe. Other inconsistencies (with the Act) alleged by the Petitioner were: (1) That the permit failed to require a case-by-case maximum achievable control technology determination for the emissions of hazardous air pollutants; (2) that the permit failed to include adequate monitoring of carbon monoxide; (3) that the permit impermissibly limited the enforceability of a federal stack height provision; and (4) that the permit failed to include short-term best available control technology limits. EPA's responses to the above issues in the November 12, 2002, Order were upheld by the Court; therefore, sections IV.B. through IV.E. of the November 12, 2002, Order are incorporated by reference into the Order Responding to Remand.

Dated: October 5, 2005.

**J. I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

[FR Doc. 05-20416 Filed 10-11-05; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[A-1-FRL-7982-5]

### Approval of Air Quality Implementation Plan Commitment to Submit Mid-Course Review; Massachusetts, New Hampshire and Rhode Island

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of commitment fulfillment.

**SUMMARY:** Notice is hereby given that the states of Massachusetts, New Hampshire and Rhode Island have fulfilled the enforceable commitment each state made to EPA to complete a mid-course review (MCR) assessing whether their respective nonattainment area was or was not making sufficient progress toward attainment of the one-hour ozone standard under the Clean Air Act (CAA). EPA has reviewed the MCR documents submitted by

Massachusetts, New Hampshire and Rhode Island and has determined that each state has adequately met its commitment to perform a MCR. EPA has sent a letter to each state approving their respective MCR as fulfilling the commitment made by each state in their 1-hour ozone attainment demonstration.

**ADDRESSES:** Copies of each state's MCR submittal, EPA's approval letters and EPA's technical support document (TSD) are available for public inspection during normal business hours (9 a.m. to 4 p.m.) at the following address: U.S. Environmental Protection Agency, Region 1 (New England), One Congress St., 11th Floor, Boston, Massachusetts, telephone (617) 918-1664, please telephone in advance before visiting.

**FOR FURTHER INFORMATION CONTACT:**

Richard P. Burkhart, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114-2023. Phone: 617-918-1664, Fax: (617) 918-0664, E-mail:

[burkhart.richard@epa.gov](mailto:burkhart.richard@epa.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. General Information-Copies of Documents

EPA's approval letters and TSD and each State's MCR submittal are available at the Regional Office, which is identified in the **ADDRESSES** section above. Copies of these same items are also available for public inspection during normal business hours, by appointment at the respective State Air Agency Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108; Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095; and Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908-5767.

#### II. Further Information

##### A. Background

EPA's 1996 modeling guidance recognized the need to perform a mid-course review as a means for addressing uncertainty in the modeling results. In its December 16, 1999 proposed rulemakings on the 1-hour ozone attainment demonstrations for ten ozone nonattainment areas (see one example at 64 FR 70348), EPA stated that because of the uncertainty in long-term projections, it believes that an attainment demonstration that relies on weight of evidence needs to contain

provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed. In those December 16, 1999 proposed rulemakings, EPA set forth its framework for reviewing and processing 1-hour ozone attainment demonstrations and one element of that framework was a commitment for a MCR.

A MCR provides an opportunity for the state and EPA to assess if a nonattainment area is or is not making sufficient progress toward attainment of the one-hour ozone standard. The MCR should utilize the most recent monitoring and other data to assess whether the control measures relied on in a SIP's attainment demonstration have resulted in adequate improvement of the ozone air quality. The EPA believes that a MCR is a critical element in any attainment demonstration that employs a long-term projection period and relies on a weight-of-evidence test. The commitment to perform a MCR was required before EPA would approve most 1-hour ozone attainment demonstrations. Moreover, even though the 1-hour ozone standard has been revoked by EPA (70 FR 44470, June 15, 2005), the anti-backsliding provisions of EPA's 8-hour ozone implementation rule (69 FR 23951, April 30, 2004) continue to require areas with outstanding commitments to perform a 1-hour MCR to do so.

The three 1-hour ozone nonattainment areas in New England that are the subject of this notice are as follows: (1) The Massachusetts portion of the Boston-Lawrence-Worcester, MA-NH area, (2) the New Hampshire portion of the Boston-Lawrence-Worcester, MA-NH area, and (3) the Providence, Rhode Island area. EPA's final approval of the attainment demonstrations for both portions of the Boston-Lawrence-Worcester, MA-NH 1-hour ozone nonattainment area, each with a commitment to perform a MCR, was published on December 6, 2002 (67 FR 72574 and 67 FR 72576). EPA's final approval of the attainment demonstration for the Providence, Rhode Island 1-hour ozone nonattainment area with the commitment to perform a MCR was published on April 7, 2003 (68 FR 16721).

##### B. MCR Guidance

On March 28, 2002, EPA issued a memorandum entitled "Mid-Course Review Guidance for the 1-Hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstration." Attached to that

memorandum was a technical guidance document dated January 2002 entitled "Recommended Approach For Performing Mid-course Review of SIP's To Meet the 1-hour NAAQS for Ozone."

The technical guidance contains three basic steps: (1) Perform an administrative test (e.g., demonstrate whether the appropriate emission limits were adopted and implemented); (2) analyze available air quality, meteorology, emissions and modeling data and document findings; and (3) document conclusions regarding whether progress toward attainment is being made using a weight of evidence determination (which may or may not include new modeling analyses).

### C. Review of MCR Submittals from Massachusetts, New Hampshire and Rhode Island

This section compares the content of each state's MCR submittal to the requirements in EPA's January 2002 technical guidance. A TSD with more detail on EPA's review has been prepared and is available from EPA at the address provided in the **ADDRESSES** section above.

#### 1. Massachusetts MCR Submittal

The MCR for the Massachusetts portion of the Boston–Lawrence–Worcester, MA–NH 1-hour ozone nonattainment area was submitted by the Massachusetts Department of Environmental Protection (DEP) on December 23, 2004.

##### i. Administrative Review

The Massachusetts DEP lists measures adopted to meet CAA mandates and rate-of-progress (ROP) requirements. The MCR lists the name of the control strategy or measure, whether it is a state or federal program, the rule approval date, and regulatory citation. Massachusetts also lists additional control measures that were not part of the Massachusetts SIP and that Massachusetts had not yet committed to adopt, but that it anticipates will be adopted in time to provide additional reductions prior to the 2007 ozone season. The administrative review analysis prepared by MA DEP satisfies EPA requirements.

##### ii. Air Quality, Meteorology, Emissions and Modeling Data Analysis

The Massachusetts DEP submittal analyzes ozone and precursor emissions trends, and looks at trajectory analysis of ozone exceedances in eastern Massachusetts. The results of the ozone data analysis show a downward trend in the ozone design values for eastern Massachusetts. The results show that

eastern Massachusetts has had ozone design values below the now-revoked NAAQS since the end of the 2003 ozone season. Since the ozone design values are already below the NAAQS for 1-hour ozone, eastern Massachusetts is obviously on track to reach attainment by its 2007 deadline. Precursor emission data for eastern Massachusetts for both Nitrogen Oxides (NO<sub>x</sub>) and Volatile Organic Compounds (VOC) also show a substantial downward trend since 1990. This along with the ozone trends discussed above definitely shows the eastern Massachusetts area is on track to achieve attainment of the 1-hour ozone standard by 2007. In summary, the air quality, meteorology, and emissions analysis prepared by Massachusetts DEP satisfies EPA requirements, and shows eastern Massachusetts is on target to achieve attainment by 2007.

##### iii. Document Conclusions Regarding Whether Progress Toward Attainment Is Being Made Using a Weight of Evidence Determination

The Massachusetts MCR document states that "Massachusetts is fully implementing all control programs identified in the 2002 attainment demonstration. All regional and federal programs from which additional reductions were anticipated are being implemented according to schedule. Trajectory analyses results continue to demonstrate that high ozone concentrations at the Fairhaven and Truro monitors in EMA [eastern Massachusetts] are largely due to ozone transport from upwind areas." The document goes on to state that ozone design values and 1-hour ozone levels continue to trend downward in eastern Massachusetts, furthermore ozone precursor trends are also downward, and provides data to back up these claims. EPA agrees with the Massachusetts DEP analysis.

After reviewing the Massachusetts MCR with respect to EPA guidance, EPA concludes that the Massachusetts DEP has submitted an acceptable MCR fulfilling the commitment Massachusetts made in its one-hour attainment demonstration for the Massachusetts portion of the Boston–Lawrence–Worcester, MA–NH serious 1-hour ozone nonattainment area.

#### 2. New Hampshire MCR Submittal

The MCR for the New Hampshire portion of the Boston–Lawrence–Worcester MA–NH 1-hour ozone nonattainment area was submitted by the New Hampshire Department of Environmental Services (DES) on December 30, 2004.

##### i. Administrative Review

The New Hampshire MCR lists all the measures that have been implemented and approved by EPA into the NH SIP. The document goes on to list additional control measures that will impact ozone precursor emissions in New Hampshire in a positive way. This section fulfills the required administrative review.

##### ii. Air Quality, Meteorology, Emissions and Modeling Data Analysis

The New Hampshire MCR contains air quality, meteorology, and emissions analysis for southern New Hampshire. New Hampshire states and EPA agrees that 1-hour design values in all areas of New Hampshire have been below the level of the 1-hour ozone standard since 1998. However, this nonattainment area is a part of the eastern Massachusetts 1-hour nonattainment area so air quality in the entire multi-state area should be reviewed. Based on the Massachusetts MCR discussed above, it appears that the entire area (both the Massachusetts portion and the New Hampshire portion) is on target to achieve attainment by 2007.

New Hampshire also examined emission trends for the four counties in southern New Hampshire. The trends in both VOC and NO<sub>x</sub> between 1996 and 2007 are both downward. The trends in both VOC and NO<sub>x</sub> between 2002 and 2007 are also downward. Based on New Hampshire's ozone and precursors emission analysis coupled with Massachusetts' similar analysis, this area is on target to attain by 2007 and thus this requirement is fulfilled.

##### iii. Document Conclusions Regarding Whether Progress Toward Attainment Is Being Made Using a Weight of Evidence Determination

New Hampshire documents several key parameters that show the State is on track to achieve attainment by 2007. First, all portions of New Hampshire, not just the nonattainment area, are currently meeting the 1-hour NAAQS for ozone. One-hour ozone design values continue to trend even lower. Ozone precursor emissions within New Hampshire continue to trend downward. New Hampshire uses trajectory modeling and references to additional photochemical ozone grid-point modeling to add additional evidence to their MCR demonstration. The trajectories show that at the two sites in Eastern Massachusetts that have 1-hour air quality near the 1-hour NAAQS, New Hampshire emissions have no impact. The photochemical modeling referenced by New Hampshire also shows that lower ozone values are

forecast for 2007. The New Hampshire submittal meets this requirement.

The New Hampshire DES has submitted an acceptable MCR and has fulfilled the commitment it made in its one-hour ozone attainment demonstration for the Boston–Lawrence–Worcester MA–NH serious 1-hour zone nonattainment area.

### 3. Rhode Island MCR Submittal

The MCR for the Rhode Island 1-hour ozone nonattainment area was submitted on June 16, 2005.

#### i. Administrative Review

The Rhode Island MCR states that Rhode Island is on track to implement all of the state and federal emission control measures required by the CAA. The section goes further to state that Rhode Island has already achieved attainment for the one-hour ozone standard, and states that with the additional ozone precursor reductions that will occur both in Rhode Island and upwind of Rhode Island, one-hour ozone concentrations will continue to decline into the future.

#### ii. Air Quality, Meteorology, Emissions and Modeling Data Analysis

As stated above, Rhode Island presents evidence that it has already achieved attainment of the one-hour ozone standard. All design values for one-hour ozone are below 124 ppb. Rhode Island also provides ozone trends and trajectory analyses that support the findings that ozone in Rhode Island is below the 1-hour NAAQS and will continue to decline in the future. The trajectories show that upwind emissions affect ozone in Rhode Island and these emissions will continue to decline in the future lowering ozone in Rhode Island even more.

#### iii. Document Conclusions Regarding Whether Progress Toward Attainment Is Being Made Using a Weight of Evidence Determination

Rhode Island has already achieved attainment of the one-hour standard. This requirement is met.

After reviewing Rhode Island's MCR submittal, EPA agrees with Rhode Island that it has already achieved attainment of the one-hour ozone NAAQS and approves the Rhode Island submittal as fulfilling the commitment Rhode Island made in its one-hour attainment demonstration.

### III. Final Action

EPA has reviewed the MCR documents submitted by Massachusetts, New Hampshire and Rhode Island and has determined that each state has

adequately met its commitment to perform a MCR. This action is being taken for the following one-hour nonattainment areas: (1) The Massachusetts portion of the Boston–Lawrence–Worcester, MA–NH area, (2) the New Hampshire portion of the Boston–Lawrence–Worcester, MA–NH area, and (3) the Providence, Rhode Island area. EPA has sent a letter to each state approving their respective MCR as fulfilling the commitment made by each state in their 1-hour ozone attainment demonstration. Copies of these letters are available from EPA at the address provided in the **ADDRESSES** section above.

### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves the states’ mid-course review as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This action also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely

approves a state demonstration that the state is implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This action also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions as well as submission of reports that fulfill a state commitment, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission or a SIP commitment for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission or a SIP commitment, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 26, 2005.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

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## ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0101; FRL–7740–9]

### Pesticide Program Dialogue Committee Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, EPA gives notice of a public meeting of the Pesticide Program Dialogue Committee (PPDC) on October 20 and 21, 2005. A draft agenda has been developed and is posted on EPA's web site. Agenda topics will include: Pesticide performance measures; human studies; farmworker safety; spray drift; Pesticide Registration Improvement Act Workgroup on Process Improvements Update; integrated testing strategy and vision; updates on