

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

MAR 26 1987

MEMORANDUM

SUBJECT: Request for Guidance in Drafting a State Implementation Plan (SIP)
Deficiency Notice for Michigan's Nonattainment New Source Review
(NSR) Program

FROM: Darryl D. Tyler, Director
Control Programs Development Division (MD-15)

TO: David Kee, Director Air and Radiation Division, Region V (5A-26)

This is in response to your recent memo in which you requested guidance on a SIP deficiency notice for Michigan (MI) NSR regulations. I agree with you that the program deficiencies outlined in your memo for the MI NSR rules warrant a SIP deficiency notice.

Your first concern relating to the Environmental Protection Agency's (EPA's) general policy and guidance on SIP deficiencies should be answered by the Office of General Counsel (OGC). The OGC is currently developing legal strategies on the relationship between notices of SIP deficiency and the imposition of a construction moratorium as well as other sanctions. A copy of your memo has been sent to Peter Wyckoff for response.

I can answer the other concern you included in your memo on the approvability of an NSR regulation which includes a dual source definition. As we have stated before, if an NSR regulation is otherwise approvable, the use of a dual source definition requires no demonstration for EPA to approve the SIP revision; we consider such definition to be more stringent than our minimum requirement. In fact, our concern is with proposals to use a plantwide source definition. The EPA requires a demonstration or certification for all States wishing to adopt a Part D NSR program which contains a plantwide source definition with netting. The requirements of this demonstration or certification are contained in a memo signed by Craig Potter on February 27, 1987. A copy of this guidance memo has been sent to you under separate cover.

cc: Ron Van Mersbergen
Nancy Mayer
Gary McCutchen
Greg Foote
Peter Wyckoff
Rich Ossias

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

DATE: Feb 20 1987

SUBJECT: Request for Guidance in Drafting a SIP Deficiency Notice for Michigan's Nonattainment New Source Review Program

FROM: David Kee, Director Air and Radiation Division (5A-26)

TO: Darryl Tyler, Director Control Programs Development Division (MD-15)

This Region has concluded that there are certain deficiencies with respect to the current Federal requirements in the Michigan new source review regulations for nonattainment area (NAA) sources. Michigan's state implementation plan (SIP) NAA rule was patterned after the December 21, 1976, offset policy and submitted and approved before the August 7, 1980, Federal regulations were promulgated. The State rules were approved by giving strong consideration to equivalency with what the August 8, 1980, regulations would require on balance. However, we find at this time that implementation of the Michigan NAA new source review (NSR) program has major inconsistencies with the current Federal requirements.

Examples of the program deficiencies are as follows:

1. The State rule does not define the baseline for providing offset and now we find that many offset actions involve pre-application shutdowns.
2. Certain significant modifications to major sources in nonattainment areas are exempted because they do not exceed 100 tons per year (tpy) which is the SIP cut-off level.
3. Certain significant modifications which are required by the SIP to provide offsets are exempted from the public comment requirements.

We are currently considering drafting a notice of SIP deficiency. We request that you provide to us policy and guidance with respect to the relationship and timing of issuing a SIP deficiency notice and a proposal to impose the Section 110 (a)(2)(I) construction ban. We understand the Agency's policy to be that a ban is imposed only when and if Michigan falls off schedule in submitting a plan in response to a SIP deficiency notice or submits a disapprovable plan, and then a ban is imposed only after further notice and comment. We would also appreciate any recommendations you may give with respect to this issue.

As an area of further concern, we would like to know if Headquarters will be able to give expedited approval to an approvable dual-source (definition of source) NSR rule if one is submitted by the State. We very much want to avoid

an embarrassment to the Agency if the State submits an approvable NSR rule to avoid the construction ban and United States Environmental Protection Agency (USEPA) cannot approve it because we experience delays in approving dual-source rules. We encourage you to do what you can to help the Regions to correct environmental deficiencies in SIP regulations by making it possible to expeditiously approve adequate rules.

If you have any questions in this matter please contact Ronald Van Mersbergen at 312/886-6056.