

**York (South Carolina) Motor Vehicle Emissions Budgets for Transportation Conformity
Adequacy Determination – Response to Comments
May 2012**

The following are the U.S. Environmental Protection Agency's (EPA) responses to comments received on the adequacy notification posting for the volatile organic compounds (VOC) motor vehicle emissions budget (MVEB) submitted for the portion of York County, South Carolina that is within the Charlotte-Gastonia-Rock Hill North Carolina-South Carolina area (hereafter referred to as the "bi-state Charlotte Area"). The MVEB was part of the Reasonable Further Progress (RFP) plan for the 1997 8-hour ozone standard, submitted on August 31, 2007, and supplemented on August 29, 2010, by the South Carolina Department of Health and Environmental Control (SC DHEC). EPA has determined that the MVEB is adequate for transportation conformity purposes. The South Carolina portion of the bi-state Charlotte Area is comprised of a portion of York County, South Carolina. EPA notes that, following the adequacy notification posting and associated comment period, South Carolina withdrew its submitted attainment demonstration, but did not withdraw the State's RFP demonstration plan and accompanying VOC MVEB.

EPA received comments from the Southern Environmental Law Center (SELC), the majority of which were related to South Carolina's attainment demonstration plan for the 1997 8-hour ozone national ambient air quality standards (NAAQS) for the State's portion of the bi-state Charlotte Area. South Carolina's attainment demonstration plan was not at issue in the adequacy action. The SELC comments incorporated by reference the organization's October 26, 2009, comments to the South Carolina Bureau of Air Quality (SC BAQ) regarding the State's proposal to amend the state implementation plan (SIP) to include the attainment demonstration plan for the Rock Hill-Fort Mill MPO (RFATS) Metropolitan Planning Organization (MPO), South Carolina, 1997 8-Hour Ozone NAAQS Nonattainment Area [SR 33-9], September 25, 2009 (SC BAQ Comment Letter); and its March 29, 2010, comments to SC BAQ regarding the State's proposed supplement to the South Carolina Revised 8-Hour Ozone Attainment Demonstration for the bi-state Charlotte Area. Many of these incorporated comments also pertained to matters outside the scope of EPA's MVEB adequacy determination. The response to comments provided here only addresses those comments relevant to the Agency's MVEB adequacy determination as described at 40 CFR § 93.118(e)(4).

EPA notes that many of the comments submitted by the SELC regarding extension of the attainment deadline for the Charlotte Area and the withdrawal of South Carolina's 2007 attainment demonstration for the Area were also raised and addressed in the "Approval and Promulgation of the Extension of Attainment Date for the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-Hour Ozone Moderate Nonattainment Area" rulemaking. *See* 76 FR 31245 (May 31, 2011). EPA further notes that final action on the RFP SIP will have a

separate comment period, and during that SIP approval process, that EPA will respond to any relevant comments submitted on that action.

Comment: The Commenter stated that it is EPA's obligation, pursuant to 40 CFR § 93.118(e)(4), to find an MVEB adequate for transportation conformity purposes only where such budget is: clearly identified and precisely quantified; consistent with applicable requirements for reasonable further progress, attainment or maintenance; and consistent with and clearly related to the emissions inventory and the control measures in the SIP. *See* SELC October 26, 2009 SC BAQ Comment Letter at 10. In addition, pursuant to 40 CFR § 93.118(e)(4)(vi), the Commenter states that EPA regulations require that "revisions to previously submitted control strategies implementation plans or maintenance plans" must "explain and document any changes to previously submitted budgets and control measures," and they must document reasons for the changes (including the basis for any changes related to emissions factors or estimates of vehicle miles traveled)." *Id.* The Commenter then describes that the "South Carolina SIP budgeted motor vehicle emissions in York County to decline to a level of 8.01 tons of [nitrogen oxide] NOx emissions per day by 2009, but when the RFATS issued its conformity determination in June 2009, it estimated that 2010 emissions, which should be lower than the previous year's, will actually exceed the MVEB by nearly half a ton per day." *Id.* According to SELC, the proposed SIP failed to satisfy the EPA regulation at 40 CFR § 93.118(e)(4)(vi), which requires "that 'revisions to previously submitted control strategy implementation plans or maintenance plans' must 'explain and document any changes to previously submitted budgets and control measures,' and they must document 'reasons for the changes....'" *Id.* The Commenter points to the fact that the "revision estimates 'on-road' NOx emissions in York County at 10.2 tons per day in 2009" (which they acknowledge includes emissions from portions of the county not included in the non-attainment area). *Id.* Although Commenter acknowledges that precise comparisons of these two emissions estimates is not possible, the SELC suggests that based upon this information, "the previously submitted [2007] budget significantly underestimates emissions, and by failing to address that inaccuracy, and to explain and document how the currently proposed budget will avoid the same mistake, the proposed SIP fails to comply with federal regulations."

Response: The adequacy criteria is described at 40 CFR 93.118(e)(4)(vi), and includes the requirement that revisions to a previously submitted control strategy implementation plan or maintenance plan must explain and document any changes to previous budgets and control measures; impacts on point and area source emissions; any changes to established safety margins; and estimates of vehicle miles traveled. However, in this situation, South Carolina did not have any previously submitted or approved control strategy implementation plans or maintenance plans for the South Carolina portion of the bi-state Charlotte Area. Further, SELC's assertion that the June 2009 conformity determination exceeded the existing MVEB is inaccurate. The State submitted MVEB as part of its SIP in 2007. EPA did not make a finding of adequacy on those budgets, nor did EPA approve that SIP submittal. Therefore, there were no

budgets at the time of the June 2009 conformity determination to use in the emissions analysis. The conformity determination was made using the build/no build test and greater than baseline test in accordance with the transportation conformity rule. *See* 40 CFR § 93.119. The requirements of 40 CFR § 93.118(e)(4) cited by the Commenter are applicable only when a state has approved MVEB in a SIP. South Carolina relied upon 40 CFR 93.119 for the June 2009 conformity determination, which provides the criteria and procedures for areas without MVEBs already approved.

SELC also made several comments that mischaracterized the transportation conformity rule (40 CFR Part 93) and the MVEB adequacy requirements (40 CFR § 93.118(e)(4)). Although not directly relevant to today's determination, EPA is briefly responding to those comments in order to provide clarifications.

1. The Commenter asserts that a transportation conformity demonstration made without an approved MVEB lacks sound legal basis because if EPA declines to approve a submitted SIP's MVEB, a MPO "may nevertheless demonstrate that its transportation program, plan or project will contribute 'to an implementation plan's purpose of eliminating or reducing the severity and number of violations' in the nonattainment area by means of the 'interim emissions' test" per 40 CFR 93.119. *See* SELC October 26, 2009 SC BAQ Comment Letter at 10.

Clarification:

The transportation conformity final rule underwent extensive public comment at the time of promulgation. Comments regarding that previous rulemaking are no longer being accepted as the transportation conformity rule has been finalized. As explained earlier, the EPA had not approved any MVEB for this Area at the time that the United States Department of Transportation (U.S. DOT) approved the conformity determination for the transportation improvement program (TIP) and the long range transportation plan (LRTP) for this area. The transportation conformity rule provides that when a SIP containing an MVEB has not been submitted and approved by EPA, the build/no build test and the no greater than the baseline (2002) test should be used per 40 CFR § 93.119 of the conformity regulations.

2. SELC also provided comments on the validity of the test requirements to demonstrate conformity. *See* October 26, 2009 SELC SC BAQ Comment Letter at 10-12.

Clarification:

The tests used for transportation conformity are used in the process to demonstrate conformity of the TIP and the LRTP to the state implementation budget. These tests are not

used in the adequacy process or to determine if a MVEB submitted in a SIP is adequate. The transportation conformity rule underwent extensive public comment prior to its promulgation, including which tests for demonstration of conformity to the SIP are appropriate. SELC's comments here appear directed at that rulemaking and not EPA's adequacy determination. For information on the rationale for the selection of the appropriate tests for situations where no MVEB budget existed in an adopted SIP, refer to refer to 75 FR 49435, and 40 CFR Part 93, Subpart A.

3. SELC provided comments on assumptions used in the transportation conformity demonstration as part of the modeling of the land use and highway network and stated that distorted forecasts and the models are poorly equipped to evaluate alternative scenarios. *See* SELC October 26, 2009 SC BAQ Comment Letter at 10-12.

Clarification:

The MPO that has developed the transportation plan and improvement program must provide an opportunity for the public to comment on the proposed transportation plan. It must also demonstrate that the assumptions used in modeling and the entire transportation plan have gone through an interagency consultation process. *See* 40 CFR § 93.105. The RFATS interagency consultation group has discussed and considered the regional and local modeling inputs, including vehicle miles traveled and future traffic forecasts. The U.S. DOT considers the responses to comments on the conformity report prior to approving any transportation plans. With regard to the assumptions in the land use and highway network travel demand models used to develop the motor vehicle emission estimates as part of the State's 15 percent RFP SIP, EPA believes that the latest planning assumptions available at the time to the State and local planners were used. The State developed the budgets consistent with the joint EPA and US DOT guidance entitled, *Use of Latest Planning Assumptions in Conformity Determinations*, dated January 18, 2001, and EPA's January 2002, MOBILE 6 policy guidance. Both of these guidance memoranda clarify the Agency's expectations that SIP revisions developed with MOBILE 6 should incorporate the latest planning information and data that are available to the state at the time the SIP is developed. At the time of this SIP submittal, the data used was the latest available data that had gone through an extensive interagency consultation process as well as public comment. Again, comments on the travel demand model used in a conformity determination and the need to update that model or change certain traffic patterns and assumptions will not be addressed as part of this comment period on the adequacy of the South Carolina portion of the Charlotte Area MVEB. The State used the available mobile modeling tools available at the time of the SIP development, consistent with the regulations referred to above. The appropriate place to comment on a conformity determination is during the public comment period on the transportation plan, not the SIP MVEB public comment period.