

1995 memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Air Directors entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard", establishing the policy underlying that notice, EPA believes that it is reasonable to interpret the language of the pertinent statutory provisions so as not to require a submission of the 15% RFP plan from an area that is attaining the standard for so long as the area continues to attain the standard because the purpose of an RFP plan, as stated explicitly in section 171(1) of the CAA, is to ensure attainment by the applicable attainment date. Once an area has attained the standard, the stated purpose of the RFP requirement will have already been fulfilled. This interpretation is not based on EPA's *de minimis* authority (see *Alabama Power Co. v. Costle*, 636 F.2d 323, 360-61 (D.C. Cir. 1979)), but on the language of the pertinent statutory provisions. In sum, the commenter has not provided any rationale to persuade EPA that its interpretation is not reasonable. With respect to air quality levels, this action is premised on the determination that both Pittsburgh and Reading have attained the ozone NAAQS, which is set at a level to protect public health, allowing an ample margin of safety. Both Pittsburgh and Reading attained the standard prior to the submission of the redesignation requests in November 1993 and continue to attain the standard as there have been no monitored violations of the standard since then.

Comment #3 The CAC also commented that Reading and Pittsburgh have no VOC control strategy and that to consider redesignating the areas without reformulated gasoline and enhanced inspection and maintenance is without basis in the law or common sense.

Response #3 As noted earlier, this action is not a redesignation. Whether the redesignation requests for Pittsburgh and Reading satisfy the requirements of section 107(d)(3)(E) is a matter for a separate proceeding regarding those requests. Furthermore, EPA notes that VOC controls have been adopted and are in place in both Reading and Pittsburgh, e.g., VOC RACT control measures.

Comment #4 The CAC stated that EPA itself pointed out that its action in determining that the Pittsburgh-Beaver Valley and Reading areas have attained the NAAQS and not requiring the submittal of a 15% RFP plan does not

shield an area from future EPA action to require emission reductions where there is evidence showing that the subject area's emissions contribute to attainment/maintenance problems in other nonattainment areas. The commenter noted that EPA had determined in the January 24, 1995, "Final Rule on Ozone Transport Commission; Low Emission Vehicle Program for the Northeast Ozone Transport Region" (60 FR 4712) (OTC LEV Program) that ozone and emissions from western Pennsylvania contribute to the ozone problems in the Philadelphia nonattainment area and stated that it is inequitable to require a 15% RFP plan for Philadelphia but not for areas that contribute to Philadelphia's air quality problem.

Response #4 The issue concerning the applicability of RFP, attainment demonstration and related requirements must be considered independently from the issue of EPA's authority to impose requirements relative to intrastate transport of emissions. Today's rulemaking action only determines that the Pittsburgh-Beaver Valley and Reading areas have attained the NAAQS and states that the CAA does not require the submittal of a 15% RFP plan and other related requirements so long as the areas continue to attain the standard.

EPA has separate authority under sections 110(a)(2) (A) and (D) to require that SIPs include adequate provisions prohibiting sources in one area from contributing significantly to nonattainment or interfering with maintenance in any other area. However, a general finding of SIP inadequacy is not warranted at this time for two reasons. First, Pennsylvania is part of the Ozone Transport Region (OTR) and not requiring RFP and attainment demonstration SIP revisions does not relieve the Pittsburgh-Beaver Valley and Reading nonattainment areas from meeting the emission reduction requirements of section 184(b). This section requires States in the OTR to implement specific control measures in all areas of the OTR regardless of attainment status. These control measures are also the creditable emission reductions commonly used by States to meet the 15% RFP plan requirement. Consequently, these areas may in fact obtain the 15% reduction in VOC emissions called for by the 15% RFP plan requirement.

Furthermore, EPA determined in the OTC LEV Program Rule that emission reductions achieved by the OTC LEV program applied throughout the OTR are necessary to bring certain nonattainment areas in the OTR into attainment (including maintenance) of

the ozone standard. In addition to the emission reductions from the OTC LEV program, emission reductions from other regional strategies, such as the OTC Memorandum of Understanding to adopt stringent controls on NOx emissions from stationary sources, which was signed by Pennsylvania, are anticipated. As EPA concluded in the OTC LEV Program Rule, however, the States in the OTR should be allowed the opportunity to address pollution transport in the attainment demonstrations that will be forthcoming from the nonattainment areas of the OTR before the Agency exercises its SIP-call authority more broadly to address non-LEV deficiencies. See 60 FR 4717-18 (Jan. 24, 1995).

Comment #5 The South Western Pennsylvania Growth Alliance (SWPGA) and Greater Pittsburgh Chamber of Commerce submitted comments supporting EPA's rulemaking. In addition, they submitted comments concerning issues relevant to the redesignation of the Pittsburgh-Beaver Valley area.

Response #5 EPA acknowledges these comments. However, as stated in the DFR, EPA is only determining that the Pittsburgh-Beaver Valley and Reading areas have attained the NAAQS and that the submittal of a 15% RFP plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures is not required by the CAA so long as the areas do not violate the ozone standard.

Final Action

EPA is making a final determination that the Pittsburgh-Beaver Valley and Reading ozone nonattainment areas have attained the ozone standard and continue to attain the standard at this time. As a consequence of this determination, the requirements of section 182(b)(1) concerning the submission of the 15% RFP plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the area so long as the area does not violate the ozone standard. Since these areas will not be required to submit 15% RFP plans or attainment demonstrations, these areas will not be in the control strategy period for conformity purposes for so long as the areas do not violate the standard. However, the Pittsburgh-Beaver Valley and Reading areas, which are already demonstrating conformity to a submitted maintenance plan pursuant to 40 CFR part 51, § 51.448(i), may continue to do so, or the Commonwealth may elect to withdraw