

USEPA believes the Ohio NO<sub>x</sub> sources addressed here, which includes a cap and an allowance trading program, will be adequately controlled to ensure the sources in the State will meet the statewide NO<sub>x</sub> budget established by USEPA.

#### *D. What Public Review Opportunities Were Provided?*

The Director of the Ohio Environmental Protection Agency “\* \* \* may conduct public hearings on any plans for the prevention, control, and abatement of air pollution that the director is required to submit to the federal government.” (Ohio Revised Code Chapter 3704.03, Powers of the director of environmental protections.) Ohio’s Director held several meetings early on in the rule development process, shortly after the USEPA promulgated the Finding of Significant Contribution and Rulemaking for the Purpose of Reducing Regional Transportation of Ozone Rule (see 63 FR 57356, dated October 27, 1998). During the course of development, Ohio sent draft rules to stakeholders for review and comment. This process was repeated several times until the State was satisfied it had developed an adequate set of rules and fulfilled the public process. Stakeholders included affected utilities, major heavy industry, environmental groups (both local and national), consultants, industry and manufacturing associations, planning commissions and councils of government, and one university.

A public hearing was held in Columbus, Ohio, on April 11, 2002, and Ohio accepted written comments until April 26, 2002. The transcript of the public hearing is included as part of the State’s submittal and can be found in the Docket at Region 5. On January 16, 2003, USEPA published a direct final rule approving the Ohio NO<sub>x</sub> plan. An adverse comment was made regarding that publication and USEPA announced to the public the withdrawal of the rule on March 17, 2003. See 68 FR 12590.

On June 25, 2003, Ohio sent to USEPA a letter committing to revise the flow control date. This letter was prompted by discussions between USEPA and Ohio EPA that we would conditionally approve the Ohio plan if the State made a commitment to change the flow control date from 2006 to 2005. Ohio submitted the letter and, therefore, we are taking action to conditionally approve the Ohio NO<sub>x</sub> plan.

#### *E. What Guidance Did USEPA Use To Evaluate Ohio’s NO<sub>x</sub> Control Program?*

USEPA used the final NO<sub>x</sub> SIP Call rule at 40 CFR part 96 for review of

portions of the Ohio submittal. We also used 40 CFR 51.121 and 51.122 to evaluate Ohio’s rules and the plan. The Ohio rules also apply to portland cement kilns. To see USEPA’s current position on these types of sources the public can consult USEPA’s proposed part 98, dated October 21, 1998 (See 63 FR 56394), which USEPA expects to finalize shortly.

#### *F. Does the Ohio Plan Meet Federal NO<sub>x</sub> SIP Call Requirements?*

USEPA is satisfied that the Ohio plan meets the requirements of the NO<sub>x</sub> SIP Call. Ohio’s rules are patterned directly from the USEPA model rule and Ohio EPA included in the rules all of the requirements needed for approval by USEPA. The plan includes a budget trading program, and addresses all of the components of the emissions budget listed in the USEPA technical amendment. Ohio’s analysis indicates that additional NO<sub>x</sub> control strategies will not be necessary to meet the NO<sub>x</sub> budget for the State. USEPA has previously determined, on August 5, 2002, (67 FR 50600) that Ohio had satisfied the requirements for submittal of a complete plan to address NO<sub>x</sub> controls on major sources of emission.

#### *G. What Deficiencies Were Noted in the Ohio EPA NO<sub>x</sub> Plan?*

USEPA found a deficiency in Ohio’s submittal regarding the flow control date. In reviewing Ohio’s July 11, 2002, NO<sub>x</sub> SIP Call submittal, USEPA found that the State’s rule requires flow control to apply in 2006. (See OAC Chapter 3745–14–06(E)(6)) The NO<sub>x</sub> SIP Call model rule requires flow control to apply in the second year of the program. This means Ohio’s rule which like the neighboring States implements the NO<sub>x</sub> plan in 2004, should require flow control in 2005, the second year of the NO<sub>x</sub> program.

Ohio used the model rule (63 FR 57356, dated October 27, 1998) to develop its plan. The State also used language from elements of the Section 126 rule (65 FR 2674, dated January 18, 2000) in place of some of the language from the model rule. An amendment to the Section 126 rule dated April 30, 2002, (see 67 FR 21522) extended the flow control date to 2006. This one year extension corresponds to the extension of the compliance date noted earlier. While the extension by one year of flow control date to 2006 is appropriate for Section 126, it is not appropriate for Ohio’s rule in the NO<sub>x</sub> SIP Call. A detailed discussion regarding the difference in the dates for flow control between Section 126 program and the NO<sub>x</sub> SIP Call can be found in 65 FR

2674, dated January 18, 2000. We do not expect there will be any States subject to Section 126. All affected States are expected to implement an NO<sub>x</sub> SIP Call plan by the compliance date of May 2004. In order for flow control to be universally applied to all sources in the NO<sub>x</sub> SIP Call region, the flow control date must be established as no later than 2005 (the second year of the NO<sub>x</sub> program) for all of the States in the ozone transport region whose programs begin no later than 2004.

USEPA believes the 2006 date in the Ohio rule is a deficiency which can be addressed by Ohio through the submittal of a letter of commitment to revise the flow control date at the soonest possible time before the NO<sub>x</sub> compliance date. Therefore, we are conditioning the approval of the Ohio NO<sub>x</sub> plan based on Ohio EPA’s submittal of the June 25, 2003 letter committing to change the flow control date from 2006 to 2005. The letter included a list of steps and approximate schedule by which the change to the flow control date will occur.

USEPA also found a deficiency in OAC Chapter 3745–14–09(G)(7) entitled NO<sub>x</sub> Budget Opt-in Units. The Ohio rule states that opt-in units that have withdrawn from the program can re-apply for a permit after 2 years. A previous version of the Ohio rule had this time period as 4 years, which is the time period found in both the NO<sub>x</sub> SIP Call model rule and the Section 126 rule. The purpose of the 4 year period in the model rule is to discourage these opt-in sources from coming in and out of the budget trading program at a frequency that would be disruptive to the operation of the trading program. USEPA recommends Ohio change this time period from 2 years to 4 years.

#### *H. What Was USEPA’s Initial Action Regarding the Ohio Plan?*

On January 16, 2003, USEPA published a direct final approval of the Ohio NO<sub>x</sub> plan. This approval was made with the understanding that Ohio would change the flow control date to 2005. We also noted that if there were no adverse comments received within the 30-day comment period the rule would be effective within 60 days from the date of publication of the **Federal Register** and USEPA would at that time populate the compliance accounts and sources would be able to participate in the trading process.

#### *I. What Comments Were Received on Ohio’s Plan?*

AEP submitted a comment which, upon review, USEPA determined to be adverse. We then published a