

tons per day for VOC and 161.8 tons per day of NO_x.

E. What Is the Status of the 1999 Motor Vehicle Emission Budgets Contained in the 1996–1999 ROP Plan for the Area?

We are proposing to conditionally approve the 1996–1999 ROP plan for the area including the 1999 motor vehicle emission budgets, or in the alternative, to disapprove this SIP with a protective finding. It should be noted that the 1999 budgets in the ROP plan do not have to be revised using MOBILE6 since these budgets were established for a year prior to the implementation of the Tier 2/ sulfur regulations.

VI. What Is the Basis for the Proposed Actions?

A. Conditional Approval

In the previous sections of this document, the EPA has presented our analysis of the 1996–1999 ROP plan and attainment demonstration plans submitted for the Washington area. The EPA has concluded that these submittals will be fully approvable once several deficiencies are corrected. Two of these deficiencies were identified by the Circuit Court, namely that the 1996–1999 ROP plan and the attainment demonstration lack contingency measures, and the attainment demonstration lacks an analysis showing that all RACM have been adopted for implementation in the Washington area. A third deficiency we have identified with the attainment demonstration is the lack of revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

To cure these deficiencies and allow for full approval of the SIPs the States must undertake the actions set forth below. For contingency measures related to the attainment demonstration, the States need to identify which measures have been implemented since the area failed to attain by November 15, 1999. In addition, because the Washington area will on March 25, 2003, become a severe nonattainment area, the attainment demonstration for the Washington area must also include contingency measures if the area fails to attain by November 15, 2005. For the 1996–1999 ROP plan contingency requirement, the area needs to identify those adopted measures that qualify as contingency measures to be implemented if EPA notifies the states that the Washington area did not

achieve the required 9 percent rate of progress reductions by November 15, 1999.

The deficiencies in the SIPs are due to the actual (or potential) lack of certain enforceable measures in the SIPs. Under section 110(k)(4) of the CAA, the EPA “may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.”

The EPA concludes that the SIP revisions identified in the section of this document entitled “I. What action is the EPA proposing today?” can be conditionally approved because each of the States has committed to all of the following:

(1) Submit to the EPA by April 17, 2004, a contingency plan containing those adopted measures that qualify as contingency measures due to the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999, and also those adopted measures that qualify as contingency measures to be implemented if EPA notifies the states that the Washington area did not achieve the required 9 percent rate of progress reductions by November 15, 1999.

(2) Revise and submit to the EPA by April 17, 2004, an updated attainment demonstration SIP that reflects revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(3) Submit to the EPA by April 17, 2004, adopted contingency measures to be implemented if the Washington area does not attain the one-hour ozone NAAQS by November 15, 2005.

(4) Submit to the EPA by April 17, 2004, an appropriate RACM analysis for the Washington area, along with any revisions to the attainment demonstration SIP necessitated by such analysis, should there be any.

These commitments are embodied in the following letters:

(1) A letter, dated January 14, 2003, from Richard F. Pecora, Secretary, Maryland Department of the Environment, to Donald S. Welsh, Regional Administrator, EPA, Region III.

(2) A letter, dated January 14, 2003, from Robert G. Burnley, Director, Virginia Department of Environmental

Quality, to Donald S. Welsh, Regional Administrator, EPA, Region III.

(3) A letter, dated January 14, 2003, from Theodore J. Gordon, Senior Deputy Director for Environmental Health Science and Regulation, Government of the District of Columbia Department of Health, to Donald S. Welsh, Regional Administrator, EPA, Region III.

These letters contain the commitments that are acceptable in form and substance to comply with sections 110(k)(3) and (4) of the Act.

Although each of the Washington area States has committed to submitting the RACM analysis, the contingency measures and the 2005 revised mobile vehicle emissions budgets to EPA by April 17, 2004, these three things are among the severe area SIP elements required by the reclassification of the Washington area to severe ozone nonattainment. Therefore, as a practical matter, these three elements will have to be submitted to EPA consistent with the schedule for submission of the severe area SIP revisions to EPA. Under the schedule set forth in the final rule reclassifying the Washington area, each of the three Washington area States must submit all of the severe area SIP revisions no later than March 1, 2004. (See 68 FR 3410). Notwithstanding the April 17, 2004, commitment date, failure of the States to submit these three elements by March 1, 2004, can have repercussions. If EPA makes a finding that any of the Washington area States have failed to submit any of the required severe area SIP elements by March 1, 2004, or if EPA makes a finding that any of the required submittals is incomplete in accordance with section 110(k)(1)(B) and 40 CFR part 51, Appendix V, section 179(a) provides for the imposition of two sanctions. See section 179(a) of the CAA and 40 CFR 52.31. Under EPA’s sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA unless the EPA has determined the State has submitted the required SIP revisions meeting the completeness criteria section 110(k)(1)(B) and of 40 CFR part 51. If 6 months after the first sanction is imposed EPA has not determined that State has submitted the required SIP revisions meeting the completeness criteria section 110(k)(1)(B) and of 40 CFR part 51, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds.

However, as discussed previously in this document, because the commitment letter recites April 17, 2004, as the