UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

February 27, 1987

MEMORANDUM

SUBJECT: Plantwide Definition Of Major Stationary Sources of Air Pollution

FROM: J. Craig Potter
Assistant Administrator for Air and Radiation

TO: Director, Air Management Division Regions I, III, V, and IX

Director, Air and Waste Management Division Region II

Director, Air, Pesticides, and Toxic Management Division Regions IV and VI

Director, Air and Toxics Division Regions VII, VIII, and X

As you know, in October 1981 the Environmental Protection Agency (EPA) revised the new source review (NSR) regulations in 40 CFR Part 51 to allow adoption and use of the "plantwide" definition of "source" in nonattainment areas (46 Fed. Reg. 50766). Since then, the Supreme Court has upheld that action in Chevron, USA, Inc. v. NRDC, Inc., 104 S.Ct. 2778 (1984), and many States have submitted State implementation plan (SIP) revisions that would adopt the plantwide definition for nonattainment purposes, either by substituting that definition for a definition that already exists in the SIP as part of a previously approved NSR program or by including it as part of the nonattainment NSR program still missing from the SIP. The purpose of this memorandum is to provide guidance on the preparation of Federal Register notices proposing action on those pending submissions and to ask that you process those submissions as quickly as possible.

In its 1981 action, EPA ruled that a State wishing to adopt a plantwide definition has discretion to do so. However, the EPA also stated that use of the plantwide definition could not interfere with reasonable further progress (RFP) and timely attainment of the relevant national ambient air quality standards (NAAQS). Thus, EPA further ruled that, if a State had relied on emission reductions that it projected would result from the operation of a "dual" definition (or a definition similar to the dual definition) in obtaining EPA approval of its Part D plan, then the State would have to revise its attainment strategy and demonstration as necessary to accommodate reduced permitting under the plantwide definition.

The EPA did not restrict a State's ability to adopt a plantwide definition in any other respect. It did not, however, on the premise that the Clean Air Act (Act) would operate independently to generate Part D plans that would assure RFP and timely attainment (see 46 FR 50767 col. 2, 50769 col. 1).

Category A: Adequate SIP, No Prior Reliance on Dual Definition

In view of the above, a proposal to approve is appropriate for those pending submissions where the State: (1) has a fully approved Part D SIP, (2) is not subject to a call by EPA for a SIP revision, and (3) did not rely on a dual or similar definition in its attainment demonstration. Where EPA has previously approved a Part D plan on the basis of an attainment demonstration, you should determine whether there was reliance on a dual or similar definition, either by examining the demonstration yourself or by asking the State to certify that there was no such reliance and then reviewing that certification.

Category B: Adequate SIP, Prior Reliance on Dual Definition

A proposal to approve would also be appropriate for any submission where the State: (1) has a fully approved Part D SIP, (2) Is not subject to a call by EPA for a SIP revision, and (3) did rely on the operation of a dual or similar definition but now has adjusted its strategy or demonstration or both to compensate or otherwise account for the effects, if any, of the switch to the plantwide definition. This could be done in one of several ways, as follows:

1. Altered Circumstances/Revised Views. The State could make a showing that any emission reductions previously projected to be obtained from the NSR program are no longer needed as part of the attainment strategy in the current SIP (e.g., because fewer reductions are needed than originally forecast, or because additional reductions will be forthcoming elsewhere). Similarly, the State could revise its original views as to the emission reductions that would be obtained from NSR using the existing definition (e.g., upon reassessment, the State might conclude that the plantwide definition could be at least as effective in producing reductions).

2. Progressive Netting. The State could require that all emission reduction credits used for plantwide netting be discounted at (or beyond the offset ratio specified in the applicable SIP. Such a measure would assure that any emission reductions previously expected as a result of applying NSR would be achieved through plantwide netting.

3. Compensating Changes Within the NSR Program. Alternatively, the State could submit other changes to the NSR program (e.g., increasing the offset ratio for the reduced number of anticipated NSR permits) such that the total emission reductions attributable to the NSR program would remain constant.

4. Compensating Changes Elsewhere in the SIP. Finally, the State could also compensate (in whole or in part) for any fall-off in emission reductions previously expected from NSR, if any, by making compensating changes elsewhere in the SIP (e.g., by adopting additional control measures (for existing sources).

Category C: Inadequate SIP

A proposal to approve would be appropriate for a submission where the State does not have a fully approved Part D plan or is subject to a call for a SIP revision only if the State has shown it is making, and will continue to make, reasonable efforts to adopt and submit a complete plan for RFP and timely attainment. Specifically, the State must submit written assurances that it is making reasonable efforts to develop a complete approvable SIP and intends to adhere to the schedule for such development (including dates for the completion of an emissions inventory and subsequent increments Of progress) stated in the submission or previously forwarded to EPA. The State assurances will become part of the SIP; however, they need not be verified by, e.g., detailed quantifications, or showings that all reductions needed for areawide progress or attainment have been identified and targeted for regulation. They are, however, expected to be based upon a meaningful review by the State. Likewise, EPA will not second-guess the assurances, provided that they constitute a substantial assessment and, as a whole, explain how use of the plantwide definition is consistent with the State's SIP development strategy.

One of the pillars of the 1981 action was EPA's confidence that the Act would independently generate adequate attainment plans. However, many nonextension areas with previously approved plans are still experiencing violations Of the relevant NAAQS, and many extension areas are still without approved attainment plans. The purpose of the requirement for specific assurances from the State is to rebuild for the specific case that level of confidence that supported EPA's general willingness in 1981 to approve the use of the plantwide definition.

Incidentally, if the State previously relied on the operation of a dual or similar definition in obtaining approval of its Part D plan, it would also have to adjust its strategy or demonstration or both to compensate or otherwise account for the effects, if any, of the switch to the plantwide definition, even though EPA has called for a SIP revision.

A process to disapprove would be appropriate for all other cases, in particular where the State has yet to obtain approval of a Part D plan and has failed to show that it is making reasonable efforts to develop the SIP revisions necessary at this point.

We have prepared "boilerplate" language for each of these cases. A copy is attached. You should tailor it to fit the circumstances of each particular SIP submission.

If you have any questions, please contact Gary McCutchen (FTS-629- 5591).

Attachment

cc: Mike Alushin, LE-134A
Don Clay, ANR-443
Alan Eckert, LE-132A
Greg Foote, LE-132A
Joe Lees, ANR-443
Mike Levin, PM-223
Paul Stolpman, ANR-443
John Thillmann, ANR-443
Bob Wayland, A-101
Peter Wyckoff, LE-132A

ATTACHMENT

INSERT FOR FEDERAL REGISTER PROPOSALS
TO APPROVE PLANTWIDE DEFINITION

On October 14, 1981, the Environmental Protection Agency (EPA) revised the new source review (NSR) regulations in 40 CFR Part 51 to give States the option of adopting the "plantwide" definition of stationary source in nonattainment areas (see 46 FR 50766). This definition provides that only physical or operational changes that result in a net increase in emissions at the entire plant require a NSR permit. For example, if a plant increased emissions at one piece of process equipment but reduced emissions by the same amount at another piece of process equipment at the plant, then there would be no net increase in emissions at the plant and therefore no "modification" to the "source." The plantwide definition is in contrast to the so-called "dual" definition [or a definitional structure like that in the 1979 offset ruling (44 FR 3274), which has much the same effect as the dual definition]; under the dual definition, the emissions from each physical or operational change are gauged without regard to reductions elsewhere at the plant.

In the October 1981 Federal Register notice, EPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766-69). In its view, allowing use of the plantwide definition was a reasonable accommodation of the conflicting goals of Part D of the Clean Air Act (Act); on the one hand, reasonable further progress (RFP) and timely attainment of national ambient air quality standards (NAAQS), and on the other, maximum State flexibility and economic growth. The EPA recognized that use of the plantwide definition would bring fewer

plant modifications into the nonattainment permitting process, but emphasized that this generally would not interfere with RFP and timely attainment primarily because the States under the demands of Part D eventually would have adequate State implementation plans (SIP's) in place. For instance, EPA stated:

> Since demonstration of attainment and maintenance of the NAAQS continues to be required, deletion of the dual definition increases State flexibility without interfering with timely attainment of the ambient standards and so is consistent with Part D [46 Fed. Reg. 50767 col. 2].

The EPA added that in any event the use of a dual definition, by bringing more plant modifications through the NSR process or subjecting them to the construction ban (40 CFR 52.24), may discourage replacement of older, dirtier processes and hence retard not only economic growth, but also progress toward clean air. The EPA also pointed out that under the plantwide definition new equipment would still be subjected to any applicable new source performance standard and that wholly new plants, as well as any modifications that resulted in a significant net emissions increase, would still be subject to NSR. Thus, EPA saw no significant disadvantage in the plantwide definition from the environmental standpoint, as against the advantages from the standpoints of state flexibility and economic growth. It regarded the plantwide definition as presenting, at the very worst, environmental risks that were manageable because of the independent impetus to create adequate Part D plans, and at best the potential for air quality improvements driven by the marketplace.

As a result, EPA ruled that a State wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one restriction on that discretion. If a State had

specifically projected emission reductions from its NSR program as a result of a dual or similar definition had relied on those reductions in an attainment strategy that EPA later approved, then the State needed to revise its attainment strategy as necessary to accommodate reduced NSR permitting under the plantwide definition (46 FR 50767 col. 2, 50769 col. 1).

In 1984, the Supreme Court upheld EPA's action as a reasonable accommodation of the conflicting purposes of Part D of the Act, and hence well within EPA's broad discretion. Chevron, U.S.A., Inc. v. NRDC, Inc., 104 5.Ct. 2778. Specifically, the Court agreed that the plantwide definition is fully consistent with the Act's goal of maximizing State flexibility and allowing reasonable economic growth. Likewise, the Court recognized that EPA had advanced a reasonable explanation for its conclusion that the plantwide definition serves the Act's environmental objectives as well (see 104 S.Ct. at 2792). The EPA today generally reaffirms the rationales stated in the 1981 rulemaking. Those rationales were left undisturbed by the Supreme Court decision, Further, EPA has not received any empirical information since the 1981 rulemaking that would require a departure from the basic reasoning in support of the plantwide definition.

[Insert for States in "Category A" with an approved NSR program and an approved attainment plan that does not rely on the NSR program to demonstrate attainment.]

On_____, the State of_____submitted a SIP revision that would substitute a plantwide definition of source for the existing dual definition in the State's nonattainment NSR program. The EPA previously approved the Part D SIP for the relevant nonattainment areas on the basis of an attainment demonstration. The State has certified that it

did not rely on any reduction from the operation of the existing NSR program in that demonstration, and EPA's examination of the demonstration confirms that it did not. Therefore, EPA here proposes to approve the switch to a plantwide definition inasmuch as it satisfies the only restriction EPA placed on such changes.

[Insert for States in "Category B" with an approved NSR program and an approved attainment plan that relies on the NSR program to demonstrate attainment.]

On_____, the State of_____submitted a SIP revision that would substitute a plantwide definition of source for the existing dual definition in the State's nonattainment NSR program. The EPA previously approved the Part D SIP for the relevant nonattainment areas on the basis of an attainment demonstration, and the State relied in that demonstration on emission reductions it projected would result from the operation of the NSR program. The State, however, has adjusted its attainment strategy and demonstration to account for the loss of any reductions attributable to the operation of the dual definition as follows: [Insert content of State showing.] Therefore, EPA here proposes to approve the switch to a plantwide definition in accordance with its 1981 action inasmuch as the State has modified its attainment plan to assure RFP and attainment of he NAAQS an the original schedule approved in the plan.

[Insert for all States in "Category C" that lack an approved attainment plan or are subject to a SIP call.]

There has been, however, a material change in circumstances from those surrounding the 1981 rulemaking. In 1981, EPA assumed that nonattainment areas already had or

shortly would have Part D SIP's in place that would bring about RFP and attainment by the applicable statutory deadline. Now, however, many nonattainment areas that were to be free of NAAQS violations by the end of 1982 are still experiencing them and have yet to respond adequately to EPA's calls for SIP revisions. See generally EPA's policy on Compliance with the Statutory Provisions of Part D of the Act, 48 FR 50686 (November 2, 1983). Similarly, many areas that were to be free of violations by the end of 1987 still do not have fully approved Part D plans and, at this point, could not be free of the violations by then without the imposition of draconian measures (see, e.g., 51 FR 34428, 34431-35 (September 26, 1986)].

In light of this history of SIP development and implementation, EPA will now approve adoption of the plantwide definition into SIP's for nonattainment areas that still lack adequate plans only if the State has shown that it is making, and will continue to make, reasonable efforts to adopt and submit a complete plan for RFP and timely attainment. Specifically, the State must submit written assurances that it is making reasonable efforts to develop a complete approvable SIP and intends to adhere to the schedule for such development (including dates for the completion of an emissions inventory and subsequent increments of progress) stated in the submission or previously forwarded to EPA. In adopting and defending the plantwide definition, EPA relied in large measure on its confidence that the Act would operate independently to generate adequate attainment plans, so as to make manageable whatever risks were posed by the use of the plantwide definition. The assurances described above are necessary to restrengthen EPA's confidence with respect to this specific State plan.

[Further insert for those "Category C" States with an approved NSR program and an attainment plan that does not rely on NSR to demonstrate attainment but is subject to a SIP call.]

On_____, the State of _____submitted a SIP revision that would substitute a plantwide definition for a dual definition in its existing NSR program. Several of the nonattainment areas to which this program applies have Part D plans previously approved by EPA, but nevertheless are still experiencing violations of the relevant NAAQS, and therefore are currently subject to calls for SIP revisions by EPA. The State has shown that in obtaining EPA approval of its original Part D SIP it did not rely on any emission reductions from the operation of its existing NSR program. The State has also submitted assurances that it is making, and will continue to make, reasonable efforts to adopt and submit the necessary additional SIP revisions. [Describe the assurances.] Therefore, EPA here proposes to approve the switch to a plantwide definition, in accordance with its 1981 action.

[Further insert for those "Category C" States which have an approved NSR program, but do not have an approved attainment plan.]

On_____, the State of_____submitted a SIP revision that would substitute a plantwide definition for a dual definition in its existing NSR program. The State has yet to submit a full Part D plan and attainment demonstration for the relevant nonattainment areas, and hence did not rely on any reductions from the operation of the existing NSR program in any attainment demonstration. Therefore, EPA here proposes to approve the switch to a plantwide definition in accordance with its 1981 action, inasmuch as the State has shown that it is making,

and will continue to make, reasonable efforts to adopt and submit the necessary additional SIP revisions. [Describe the assurances.]

[Further-insert for those "Category C" States which do not have an approved NSR program, and do not have an approved attainment plan.]

On_____, the State of_____submitted a SIP revision that would add a NSR program for nonattainment areas to the SIP. This program uses a plantwide definition of source. The State has yet to submit and receive approval of an attainment demonstration for the relevant areas, and hence did not rely on any reductions from the operation of the new NSR program in an approved attainment demonstration. Therefore, EPA here proposes to approve the adoption of a plantwide definition in accordance with its 1981 action inasmuch as the State has shown that it is making, and will continue to make, reasonable efforts to adopt and submit the necessary additional SIP revisions. [Describe the assurances.]