



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

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SUBJECT: Guidelines for Preparing Letters Submitting State Implementation Plans (SIPs) to EPA and for Preparing Public Notices for SIPs

FROM: Janet McCabe, Deputy Assistant Administrator *J+GDK*
Office of Air & Radiation

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TO: Air Division Directors, Regions 1-10

The purpose of this memorandum is to transmit two guideline documents for the preparation of State Implementation Plans (SIPs) as part of the cooperative initiative between the Environmental Council of the States (ECOS), the National Association of Clean Air Agencies (NACAA), and EPA. Those documents, "Guidelines to State Agencies for Preparing Letters to Submit State Implementation Plan (SIP) Revisions to the EPA Regional Offices," and "Guidelines to State Agencies for Preparing Public Notices for State Implementation Plan (SIP) Revisions," are attached. These guidelines were developed as supporting material to the April 6, 2011, memorandum, "Regional Consistency for the Administrative Requirements of State Implementation Plan Submittals and the Use of Letter Notices." These guideline documents have been reviewed by the SIP Processing Work Group, the Office of Air and Radiation (OAR), the Office of General Counsel (OGC), the Regional Air Program Managers (APMs) and the NACAA/ECOS SIP Reform Work Group.

Please make these documents available to your states and engage with them regarding the principles and procedures outlined in the guidelines which we hope will improve future SIP development, submission, review, and final action.

Questions regarding this memorandum may be addressed to:

Region 1 – Donald Cooke
Region 2 – Paul Truchan
Region 3 – Harold Frankford
Region 4 – Nacosta Ward/Sara Waterson
Region 5 – Christos Panos
Region 6 – Carl Young
Region 7 – Jan Simpson
Region 8 – Kathy Dolan
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Region 10 – Donna Deneen

Attachments

cc: Regional Air Program Managers
Regional Counsels for Air
OAR Office Directors in OAQPS, OTAQ, and OAP
Air and Radiation Legal Office (ARLO) in OGC
EPA National SIP Reform Work Group Members
ECOS/NACAA National SIP Reform Work Group Members
(for distribution to full memberships)

Attachment A

Guidelines to State Agencies for Preparing Letters to Submit State Implementation Plan (SIP) Revisions to EPA Regional Offices

Introduction: The letter prepared by a State for submitting a SIP revision to an EPA Regional Office has a considerable impact on how quickly a SIP revision may be assigned and determined complete or incomplete, as well as on its approvability and the speed at which EPA can commence the rulemaking process. As part of the SIP reform efforts to avoid SIP processing backlogs and to expand upon implementation of Attachment A of the April 6, 2011 McCabe memo, this document provides guidance to State agencies responsible for preparing SIP submittal letters. Throughout these guidelines, the term “State” is used to refer to any State, Territory, Local, and Tribal agency with the authority to submit SIP revisions to EPA.

General Guidelines to Expedite the Review of SIP Revisions

- 1. Avoid the Use of a Single Letter to Submit Multiple SIP Revisions:** There are times when a State uses one SIP submittal letter to transmit multiple SIP revisions to an EPA Regional Office. While this is permissible under the Clean Air Act (CAA), it can cause delays in the Region’s ability to process those SIP revisions. This is especially true when the multiple SIP revisions submitted by a single letter address a variety of subject matter and/or seek to satisfy a number of different CAA requirements.

While some States may believe submitting multiple SIP revisions to EPA using a single SIP submittal letter will get all those in the processing cue faster, such “single” submittals can actually slow down SIP processing times, for the reasons explained below.

Reasons for Delays Include:

- a) It is unlikely that the EPA Region is going to use a single rulemaking to process SIPs of differing subject matter or assign SIPs of differing subject matter to the same EPA staff person. Accordingly, when the State uses a single SIP submittal letter to transmit multiple revisions of differing subject matter to EPA, that submittal must first be reviewed to determine the number of different Federal rulemakings to take and to which SIP staff to assign the various SIP revisions. For each separate rulemaking, a paper docket/administrative record must be created. Similarly, the Region must create a separate E-Docket for each rulemaking requiring that each SIP revision be uploaded into the Federal Document Management System (FDMS) separately. These administrative procedures may delay the assigning of SIP revisions for a week or more depending upon the number of SIP revisions submitted under a single letter.
- b) EPA has found that when a State uses a single SIP submittal letter to submit multiple SIP revisions addressing differing subject matter, the submission may include the information necessary for completeness and approval of one of the SIP revisions but not for all of them. The lack of completeness information for all revisions means that EPA has to carefully explain which portions of the submittal are incomplete and return the submittal to the State for certain SIP revisions, but also explain that other revisions have been determined complete and thus retained for processing.

- c) When a State submits multiple revisions under a single submittal letter, each Federal Register notice prepared for any one of the multiple revisions has to explain that while multiple revisions were submitted, this rulemaking notice only takes action on “x” while “y” and “z” will be the subject of separate rulemakings. This can be confusing and result in public comments that do not actually address the revision covered in that proposed rulemaking, which can delay final rulemaking.

Recommendation and Request to States: Please prepare a separate SIP submittal letter for each SIP revision. Your SIP submittal is more likely to include all of the materials necessary to satisfy 40 CFR Part 51 Appendix V, the April 6, 2011 McCabe memo, and the substantive requirements of the CAA when only having to do so for one SIP revision.

Note: It is acceptable to use a single SIP submittal letter for several SIP revisions of the same subject matter. One such example would be using a single SIP letter to submit several reasonably available control technology (RACT) regulations for the same NAAQS pollutant and its precursors such as multiple VOC RACT regulations for an ozone nonattainment area(s).

- 2. Avoid Requesting Delegation of Non-SIP Programs or Standards in the Same Letter Used to Submit a SIP Revision:** EPA realizes that in order for many States to request the delegation of authority for Federal regulations such as a New Source Performance Standard under 40 CFR Part 60, the State must first adopt the Part 60 rules by reference or adopt some form of State authority to implement the Federal rule. However, when a State combines notifying EPA that it has adopted such Federal regulations or standards and/or requests NSPS delegation for them in the same letter used to submit a SIP revision, there will be significant delays in processing that SIP and in the complexity of the rulemaking. This delay occurs because EPA has to explain why the request for delegation is not part of the SIP rulemaking action, and even with such an explanation, the Region may still receive public comments addressing the delegation issue, which can further delay the final rulemaking.

Requirements for the Letters Prepared by States for Submitting SIP Revisions to EPA

- 1. The SIP Submittal Letter Must Be Signed by the State Official Designated by the Governor to Submit SIP Revisions to EPA:** In addition, the SIP submittal letter must be addressed to the EPA Regional Administrator (RA) or the Regional Air Division Director (ADD) if the RA has delegated that authority to the ADD to accept SIP revision submittals. Even if the ADD has been delegated the authority by the RA, it is always acceptable for a State to address a SIP revision submittal letter to the RA. Anything submitted by the State after the original submittal that the State wishes for EPA to consider in its decision to approve or disapprove the SIP revision must also be submitted to the RA (or the duly delegated ADD) by the State Official designated by the Governor to submit SIP revisions to EPA.

- 2. The SIP Submittal Letter Must Clearly Identify the Portions of a State Regulation(s) or Document that the State is Requesting for Approval as a SIP Revision:** There are times when a State submits a regulation or some other State enforceable document for approval as a SIP revision that includes provisions that are unrelated or unnecessary to satisfy the CAA and applicable Federal requirements; or certain provisions that the State does not intend to be considered to be part of its SIP revision request. Unless the State is requesting approval of the entire regulation or document, the SIP submittal letter must clearly delineate which specific provisions of such a regulation or document the State is requesting be approved as part of its SIP and which are not. When the State does so, there is no need for EPA to discuss those provisions in its rulemaking notices.

However, when a State submits an entire regulation, including provisions for which EPA has no authority to approve as part of a SIP, and the State does not indicate that it is not including those provisions in its SIP revision request; EPA has no option other to consider the entire regulation or document part of the SIP revision request. Therefore, EPA must explain in its rulemaking notices which provisions it is approving and which provisions on which it is taking no action and why. In our experience, this can invite unnecessary public comments on our proposed rulemaking (objecting to our taking no action) and delay final rulemaking action while responses to comments are prepared. If the commenters continue to object to our taking no action, they may file litigation on our final approval.

3. SIP Submittal Letter Requirements Specifically to Implement Attachment A of the April 6, 2011 McCabe Memo:

- a) States are required to enclose only one paper copy of the SIP revision with the original dated letter signed by the State official authorized to submit SIP revisions. As stated previously, the submittal letter must be addressed to either the RA or the ADD in a given Regional Office (provided the RA has delegated the authority to receive SIP revisions to the ADD).
- b) The SIP submittal letter must include a statement that the electronic copy provided by the State to EPA whether by disk or otherwise made available to the Regional Office is an exact duplicate of the hard copy.

The SIP submittal letter must include language explaining how and where the electronic copy of the entire SIP revision is being provided to the EPA Regional Office, e.g., on a disk(s) actually enclosed with the SIP submittal letter and the one hard copy, by e-mail (to whom, from whom and the date it was sent), from a designated File Transfer Protocol (FTP) site, or from a State website.

In those instances where the electronic copy of the SIP submittal also includes additional disks of lengthy data files that are required to be submitted with the hard copy (for completeness), but are no longer required be printed out as part of hard copy submittal, the State submittal letter must amend the statement discussed above to explain that certain data files included on the disk(s) are not included in hardcopy. (i.e., the statement must say that the electronic copy includes an exact duplicate of the hard copy as well as additional data files supporting the submittal, with a brief description of what information these data files contain).

- c) When the electronic copy is provided on a disk(s) enclosed with the SIP submittal letter and the hard copy, the processing of the SIP will be faster. Likewise when the electronic copy of the SIP revision is made available to the EPA Regional Office in searchable portable document format (PDF), processing the SIP will be faster because that is the format required to be uploaded by EPA into FDMS. However, if the State is unable to provide an electronic copy in searchable.PDF format, the Regional Office can accept an electronic copy in image.PDF format, or as a Microsoft Word document and convert it to searchable.PDF format to load into FDMS. In the unlikely event that a State can only submit a paper copy and has no means of making an electronic copy available to EPA, the State's SIP submittal letter must include a statement to that effect. The EPA Regional Office will then scan the paper copy and create an electronic copy in searchable.PDF format to load into FDMS.

Certain Administrative Requirements for Complete SIP Revisions Found at 40 CFR Part 51, Appendix V, 2.1, that May be Addressed by Language Included in the SIP Submittal Letter

The State may use the SIP submittal letter to summarize the "evidence" included in the submittal of certain administrative authorities required for a SIP revision to be determined complete. For example, the SIP submittal letter may include statements and applicable citations that:

- a) The State adopted a regulatory SIP revision in the State code or body of regulations or issued the permit, order, or consent agreement in final form, including the date of adoption or final issuance as well as the effective date if it is different from the adoption/issuance date. Official copies of these regulations or documents must be included in the SIP submittal. When those regulations or documents themselves include all of this information regarding adoption/issuance and effective date, it is not necessary to also include it in the SIP submittal letter, but States may opt to do so.
- b) The State has the necessary legal authority under State law to adopt and implement whatever is being submitted as a SIP revision (include citations). When those regulations or documents themselves include all of this information regarding the necessary legal authority under State law to adopt and implement whatever is being submitted as a SIP revision (including citations), it is not necessary to also include it in the SIP submittal letter, but States may opt to do so.
- c) The submittal includes an official copy of the actual and enforceable regulation or document submitted for approval and incorporation by reference into the SIP.
- d) The submittal includes indication of the changes made (such as a redline/ strikethrough version) to the existing approved SIP, where applicable.
- e) The submittal includes the effective date of the regulation/document that the State is requesting be SIP approved. Whenever possible the effective date is to be indicated in the document itself. When those regulations or documents themselves include this information, it is not necessary to include statements to that effect in the SIP submittal letter, but States may opt to do so.

- f) The State followed all of the procedural requirements of the State's laws and constitution in conducting and completing the adoption/issuance of the SIP revision. If this evidence is provided elsewhere in the SIP revision submittal, it is not necessary to include statements to that effect in the SIP submittal letter, but States may opt to do so.
- g) The State provided public notice of the proposed revision to the SIP in accordance with procedures approved by EPA including the date of such notice. As States actually include a copy of the public notice in their SIP revision submittals, it is not necessary to also include this statement in the SIP submittal letter, but States may opt to do so.
- h) A statement that the SIP submission includes certification that the public hearing was held in accordance with the public notice and State laws and constitution and the public hearing requirements of 40 CFR 51.102. When a copy of the actual public hearing certification is included in the SIP submittal, it is not necessary to also include this statement in the SIP submittal letter, but States may opt to do so. Alternatively, the submittal letter may include a statement that no public hearing was held because no one requested one pursuant to the State providing the opportunity for such a hearing in the public notice.
- i) The SIP revision includes either a compilation of the public comments received by the State and the State's responses, or a statement that no public comments were submitted to the State pursuant to the public notice and no testimony was offered at a public hearing. If this evidence is provided elsewhere in the SIP revision submittal, it is not necessary to include statements to that effect in the SIP submittal letter, but States may opt to do so.

Attachment B

Guidelines to States Agencies for Preparing the Public Notices for State Implementation Plan (SIP) Revisions

Introduction: This is a set of guidelines for what must be included in a public notice published by the State to satisfy the 110(a)(1) and (2) requirements of the Clean Air Act (CAA), 40 CFR Part 51.102; and to implement Attachment B of the April 6, 2011 McCabe memo.

As noted in the April 6, 2011 McCabe memo, the public notice and public hearing requirements for SIP revisions are found at 40 CFR Part 51.102. These Federal regulations indicate that the State must afford the opportunity to submit written comments and allow the public to request a public hearing either by announcing a hearing in the public notice for comments or by providing the opportunity to request a hearing in that notice. The April 6, 2011 McCabe memo also states that EPA has determined that the term "prominent advertisement" as used in 40 CFR Part 51 when referring to the public notice required by Section 110 of the CAA for SIP revisions is media neutral. The State may continue the use of newspapers to publish these notices or may opt to publish such notices elsewhere so long as the State has determined that the public would have routine and ready access to such alternative publishing venues. States may also choose a combination approach whereby a short (and presumably less expensive) notice is published in a newspaper that informs the public where to access the complete public notice that satisfies all of the CAA and 40 CFR Part 51.102 requirements.

States may always request that the EPA Regional Office review its public notice in draft to ensure that EPA will find that it has satisfied 40 CFR Part 51.102 at the time the SIP revision is formally submitted.

What to Include in the Public Notice Informing the Public That the SIP Is Being Revised

1. The notice must include a statement that the regulations and/or documents that are the subject of the public notice will be submitted to the United States Environmental Protection Agency (EPA) to be included in or to revise the State Implementation Plan (SIP) required by the Clean Air Act.

The public notice may include a statement(s) identifying the CAA requirements the regulations and /or documents are intended to meet. However, EPA advises that when identifying the CAA requirements that the regulations and /or documents are intended to meet, the State should do so in broad terms rather than by very specific and lengthy CAA citations. EPA offers this advice to avoid situations where by the State's notice is so specific it inadvertently omits part of a citation or mistakenly cites to the wrong provision.

Examples: The public notice published by the State when announcing it will be adopting and submitting volatile organic compound (VOC) reasonably available control technology (RACT) regulations to EPA for approval and incorporation into the SIP could state that these regulations are being submitted to satisfy the CAA's requirements for sources located in ozone nonattainment areas.

When publishing a public notice for a SIP revision not specifically required by the CAA, the State may describe the regulation and/or document (for example a Consent Agreement for a specific source) and state it is being submitted to EPA for approval as a revision to reduce emissions of (name the pollutants) to attain and maintain the National Ambient Air Quality Standards promulgated by EPA to protect public health and the environment pursuant to its authority under the CAA.

2. When the State is using the same public notice to satisfy its own State requirements for public notice for additional regulations that it will not be submitting to EPA as SIP revisions, it is extremely important to inform the public which regulations will be submitted for inclusion in the SIP and which will not.
3. There are times when a State makes an entire regulation and/or document the subject of its public notice, but will not be requesting that EPA approve the entire regulation and or document as a SIP revision. When that is the case, the public notice must explain that while the State will be adopting the entire regulation and /or document, it will only be submitting (describe or list what will be submitted) to EPA for approval and incorporation into the SIP.
4. The public notice must announce any public hearing at least 30 days prior to the hearing, and that notice must include the date, place, and time of the public hearing. If the State receives a request for a public hearing, it must hold the already scheduled hearing as described in the original public notice or schedule a public hearing through a separate notice.

To avoid having to re-publish a second notice to provide 30 days advance notice of a public hearing, States are strongly encouraged to schedule a public hearing in the original public notice. Under 40 CFR section 51.102(a), the State may cancel the public hearing if no request for a public hearing is received during the 30-day notification period, so long as the original public notice announcing the 30-day notification period clearly states: If no request for a public hearing is received, the hearing will be cancelled; identifies the method and time for announcing that the hearing has been cancelled; and provides a contact phone number for the public to call to find out if the hearing has been cancelled.

5. The public notice must include the means by which interested persons may submit comments, to whom and the deadline for doing so.

An example Public Notice is provided below:

**MARYLAND DEPARTMENT OF THE ENVIRONMENT
AIR & RADIATION MANAGEMENT ADMINISTRATION
NOTICE OF PUBLIC HEARING**

The Maryland Department of the Environment gives notice of a public hearing concerning the following proposed revisions to Maryland's State Implementation Plan (SIP):

1. The addition of relevant portions of the 2011 GenOn Chalk Point Consent Decree (effective on 3/10/11); and
2. Removal of the PEPCO 1978 and 1979 Consent Orders.

The relevant portions of the 2011 GenOn Chalk Point Consent Decree are being submitted to the United States Environmental Protection Agency for approval and incorporation into the Maryland SIP because they will result in a significant decrease in emissions of particulate matter, sulfur oxides and nitrogen oxides to attain and maintain the National Ambient Air Quality Standards promulgated by EPA to protect public health and the environment pursuant its authority under the CAA.

The full text of these Consent Decrees/Orders and the technical support document for this SIP action are available for public review on the Maryland Department of the Environment's website at the following address: <http://www.mde.state.md.us/aboutmde/pages/reqcomments.aspx>

These documents are also available for review at the following locations: the Air and Radiation Management Administration; regional offices of the Department in Cumberland and Salisbury; all local air quality control offices; and local health departments in those counties not having separate air quality control offices.

A public hearing on this action will be held on August 31, 2011 at 10 a.m. at the Department of the Environment, 1800 Washington Boulevard, 1st Floor Conference Room, Baltimore, Maryland 21230-1720. *[The public notice may also include the following: If no request for a public hearing is received by (include a date), the hearing will be cancelled. Notification as to whether the hearing has been cancelled may be found on (provide the state agency website). Interested persons may also contact (name and phone number) to learn if the hearing has been cancelled.]*

Interested persons are invited to attend and express their views. Comments may be mailed to Deborah Rabin, Regulations Coordinator, Air and Radiation Management Administration, Department of the Environment, 1800 Washington Boulevard, Suite 730, Baltimore, Maryland 21230-1720, or emailed to drabin@mde.state.md.us, or faxed to (410) 537-4223. Comments must be received not later than **August 31, 2011**, or be submitted at the hearing. For more information, call Deborah Rabin at (410) 537-3240.

Anyone needing special accommodations at a public hearing should contact the Department's Fair Practices Office at (410) 537-3964. TTY users may contact the Department through the Maryland Relay Service at 1-800-735-2258.

GEORGE S. ABURN, JR.
Director

Date:

Air & Radiation Management Administration

The following also appeared on MDE's website:

The Maryland Department of the Environment gives notice of a public hearing concerning the following proposed revisions to Maryland's State Implementation Plan:

The Maryland Department of the Environment gives notice of a public hearing concerning proposed revisions to Maryland's State Implementation Plan:

1. The addition of relevant portions of the 2011 GenOn Chalk Point Consent Decree (effective on 3/10/11); and ([See GenOn Consent Decree](#)) ([See Technical Support Document](#))
2. Removal of the PEPCO 1978 and 1979 Consent Orders. ([See PEPCO Consent Orders](#))

The full text of these Consent Decrees/Orders and the technical support document regarding this action are attached to this hearing notice.

These documents are also available for review at the following locations: the Air and Radiation Management Administration; regional offices of the Department in Cumberland and Salisbury; all local air quality control offices; and local health departments in those counties not having separate air quality control offices.

A public hearing on this action will be held on **August 31, 2011**, at 10 a.m. at the Department of the Environment, 1800 Washington Boulevard, 1st Floor Conference Room, Baltimore, Maryland 21230-1720.

Interested persons are invited to attend and express their views. Comments may be mailed to Deborah Rabin, Regulations Coordinator, Air and Radiation Management Administration, Department of the Environment, 1800 Washington Boulevard, Suite 730, Baltimore, Maryland 21230-1720, or emailed to drabin@mde.state.md.us, or faxed to (410) 537-4223. Comments must be received not later than August 31, 2011, or be submitted at the hearing. For more information, call Deborah Rabin at (410) 537-3240.

Anyone needing special accommodations at a public hearing should contact the Department's Fair Practices Office at (410) 537-3964. TTY users may contact the Department through the Maryland Relay Service at 1-800-735-2258.

GEORGE S. ABURN, JR.
Director
Air & Radiation Management Administration

