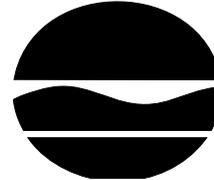


Department of Environmental Conservation  
Division of Air Resources



Alexander B. Grannis  
Commissioner

**NEW YORK  
STATE IMPLEMENTATION PLAN  
FOR THE  
INTERSTATE TRANSPORT OF PM<sub>2.5</sub>  
UNDER SECTION 110(a)(2)(D)(i)  
&  
INFRASTRUCTURE ASSESSMENT  
UNDER SECTIONS 110(a)(1) AND (2)  
OF THE CLEAN AIR ACT**

PROPOSED REVISION

NOVEMBER 2009

**New York State Department of Environmental Conservation**  
*David A. Paterson, GOVERNOR*

*Alexander B. Grannis, COMMISSIONER*

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**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION'S  
"TRANSPORT SIP" ADDRESSING THE SATISFACTION OF OBLIGATIONS  
UNDER SECTION 110(a)(2)(D)(i) OF THE CLEAN AIR ACT  
FOR THE 2006 PM2.5 NATIONAL AMBIENT AIR QUALITY STANDARD**

Introduction:

EPA promulgated a 24-hour National Ambient Air Quality Standards (NAAQS) for fine particulate matter 2.5 microns or less in size (PM2.5) on September 21, 2006. Section 110(a)(1) requires that states submit a state implementation plan (SIP) within three years after the promulgation of a NAAQS demonstrating that they meet their Section 110(a)(2)(D)(i) transport obligations under the Clean Air Act (CAA). This includes showing that its emissions do not contribute significantly to another state's nonattainment, or interfere with maintenance of the national primary or secondary ambient air quality standard, or interfere with measures required in the applicable SIP for another state designed to "protect visibility" for the PM2.5 NAAQS until regional haze SIPs are submitted.

This "transport SIP" revision is being provided to EPA to address these requirements and, as outlined in EPA's August 15, 2006 guidance from Mr. William Harnett providing guidance on the content of this submission, affirms the following:

- That the transport of PM2.5 does not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard, or interfere with measures required to be included in the applicable implementation plan for any other state.
- That the PSD and NNSR program in New York addresses the requirement that new or modified sources will not cause or contribute to air pollution in excess of the NAAQS for PM2.5, and
- That no source in New York can be shown to interfere with measures intended to protect visibility in other states.

Transport of PM2.5:

On April 29, 2008, the Department submitted the attainment SIP for the 1997 annual PM2.5 NAAQS. This SIP contains the strategies and measures that will be implemented in New York so that the 1997 annual PM2.5 NAAQS will be met by the 2010 deadline. The emission reduction measures contained in this SIP can be expected to help to achieve compliance with the 24-hour PM2.5 NAAQS as well. These measures include:

- Subpart 227-2 Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NOx)

- Subpart 220-1 Portland Cement Plants (NOx RACT)
- Subpart 220-2 Glass Manufacturing (NOx RACT)

Among the other measures included in the annual PM2.5 SIP that will require emission reductions is the Clean Air Interstate Rule (CAIR), promulgated in March of 2005, or its replacement program. In this rule, EPA intended to control and reduce the CAIR states' emissions of PM2.5 precursors that significantly contribute to, or interfere with, maintenance requirements, and claimed that CAIR would provide sufficient emission reductions to alleviate transport issues. On July 11, 2008, the D.C. Circuit Court of Appeals issued a ruling that would have vacated CAIR. EPA appealed the ruling on September 24, 2008. On December 23, 2008, instead of vacating the rule, the CAIR regulations were remanded to the EPA to address deficiencies identified by the court.

While the CAIR program rules are being revised, the original requirements remain in effect at the federal level. Additionally, New York has enacted CAIR program requirements at the state level through the promulgation of 6 NYCRR Part 243, CAIR NOx Ozone Season Trading Program, Part 244, CAIR NOx Annual Trading Program and Part 245, CAIR SO2 Trading Program. While EPA's September 25, 2009 "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM2.5) National Ambient Air Quality Standards (NAAQS)" states that the federal CAIR program cannot be used to demonstrate that a state's emissions do not significantly contribute to nonattainment of the NAAQS in any other state or interfere with maintenance, the continuing applicability of CAIR program requirements at both the federal and state levels will persist in requiring the same emission reductions previously represented by EPA as sufficient to meet section 110(a)(2)(D)(i) requirements.

While CAIR does not directly address the 24-hour PM2.5 NAAQS, it addresses the precursors of PM2.5. Therefore, its implementation can be expected to have the same protective effect on the 24-hour NAAQS as it would on the annual standard. In the September 25, 2009 guidance, EPA states its intention to complete a rule to address interstate transport in the Eastern United States. EPA goes on to say "that new rule will assist states with obligations to address interstate transport that significantly contributes to nonattainment in another state." Since this new rule will not be done in time to address the requirements of section 110(a)(2)(D) for the 2006 24-hour PM2.5 NAAQS, New York is committing to the adoption of the measures identified by EPA as needed to address interstate transport for the 2006 24-hour PM2.5 NAAQS upon EPA's completion of this rulemaking.

In addition to measures specifically intended to address PM2.5 emissions along with its precursors, New York submitted an attainment SIP for the 1997 8-hour ozone NAAQS for the New York Metropolitan nonattainment area on February 8, 2008. The reduction in emissions of the precursors of PM2.5 proposed in this SIP can also be expected to assure that New York does not contribute significantly to, or interfere with

the maintenance of, the applicable NAAQS by any other state. These measures include:

- Subpart 227-2 Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO<sub>x</sub>)
- Subpart 220-1 Portland Cement Plants (NO<sub>x</sub> RACT)
- Subpart 220-2 Glass Manufacturing (NO<sub>x</sub> RACT)

Cumulatively, all of the above measures are expected to be adequate to meet the requirements of section 110(a)(2)(D) based on EPA's prior CAIR assessment, the supporting effects of New York's permitting programs, the effects of emission reductions proposed in New York's PM<sub>2.5</sub> SIP for the annual NAAQS and 8-hour ozone SIP, and the state NNSR/PSD program discussed below will ensure this.

#### New York's Sources Do Not Cause or Contribute to Air Pollution in Excess of the NAAQS

EPA's guidance document indicates that, in demonstrating that sources in the state do not cause or contribute to air pollution in excess of the NAAQS, each state must make a SIP submission confirming that major sources in the state are currently subject to PSD and NNSR permitting programs that implement the PM<sub>2.5</sub> standards. For PM<sub>2.5</sub>, states must confirm that major sources are subject to PSD and NNSR permitting programs implemented according to EPA guidance that calls for the use of PM<sub>10</sub> as a PM<sub>2.5</sub> surrogate.

On March 12, 2009, New York submitted 6 NYCRR Part 231, New Source Review for New and Modified Facilities, to EPA for approval and inclusion in the SIP. This regulation meets the CAA section 110(a)(2)(D)(i) and 110(a)(2)(J) requirements for the application of PSD and New Source Review requirements in New York and is presently in effect in New York. The application of these requirements ensures that major sources of PM<sub>2.5</sub> in the state are currently subject to PSD and NNSR permitting programs that implement the PM<sub>2.5</sub> standard as suggested by the guidance.

With state-level PSD and NNSR requirements for PM<sub>2.5</sub> now in effect in New York, the Department meets the requirement ensuring that major sources in this state will not cause or contribute to air pollution in excess of the NAAQS.

#### Interference with Visibility Impact Reduction Measures:

The Department is presently in the process of preparing a Regional Haze SIP for submission to EPA. This document was produced in cooperation with other states and federal land managers through the Mid-Atlantic Northeast Visibility Union (MANE-VU) which developed a control strategy that will result in the reduction in visibility impairment in federal Class I areas by reducing the emission of particulate matter, including PM<sub>2.5</sub>, and its precursors. The improvement in visibility is projected to follow the "glide path"

that is expected to return visibility conditions to the preindustrial state by 2064. This strategy includes a number of control measures to which New York has committed that will enable New York to meet its obligation to avoid any interference with measures in the applicable SIP for another state designed to “protect visibility” or the PM2.5 NAAQS.

In addition to the control measures referred to above for the PM2.5 and Ozone SIPs, New York is committing to reduce the sulfur-in-fuel limits for stationary sources through the adoption of revisions to Subpart 225-1, Fuel Composition and Use – Sulfur Limitations. The regional haze SIP also includes a commitment to reduce sulfur dioxide emissions by 90 percent from certain electricity generating units identified by MANE-VU that contribute over half of the mass of sulfate and 70 to 80 percent of the visibility impairment or equivalent measures. This commitment includes the over 123,000 tons of annual emission reductions being realized by the enforceable reductions being realized through the implementation of the controls resulting from the AES and NRG/Niagara Mohawk PSD cases settlements.

At this time, the federal land managers of the Class I areas whose visibility may be impacted by sources in New York State have completed their review, and the required public hearing for the submission will be held shortly prior to submission to EPA. With the submission of its regional haze SIP, New York will have met the requirements of CAA sections 110(a)(2)(D)(i)(II) and 110(a)(2)(J) and EPA’s August 2006 guidance for the demonstration that the state’s PM2.5 SIP does not interfere with a visibility impact reduction measure being taken by other states.

## **NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION'S CLEAN AIR ACT SECTION 110(a) "INFRASTRUCTURE" ASSESSMENT FOR THE 2006 24-HOUR NAAQS**

### Introduction:

Pursuant to CAA sections 110(a)(1) and (2), states are required to meet basic SIP requirements related to the attainment of new or revised NAAQS, including those related to emission inventories, monitoring and modeling to assure attainment, maintenance and enforcement of the standards. SIPs meeting the requirements of CAA sections 110(a)(1) and (2) must be submitted within three years after promulgation of a new or revised standard.

In accordance with EPA guidance dated October 2, 2007, this submission addresses each of the required infrastructure elements of CAA section 110(a)(2), and affirms that New York State's SIPs meet the requirements of CAA sections 110(a)(1) and (2). The required elements are described in the following sections of the CAA:

- Enforceable Emission Limitations and Other Control Measures (110(a)(2)(A))
- Ambient Air Quality Monitoring, Compilation, Analysis and Reporting (110(a)(2)(B))
- Enforcement and Stationary Source Permitting (110(a)(2)(C))
- Interstate Transport (110(a)(2)(D))
- Assurance of Adequate Resources (110(a)(2)(E))
- Stationary Source Monitoring System and Reporting (110(a)(2)(F))
- Emergency Powers and Contingency Plans (110(a)(2)(G))
- Authority for SIP Revisions for Revised NAAQS (110(a)(2)(H))
- Authority for SIP Revisions for New Nonattainment Areas (110(a)(2)(I))
- Consultation, Public Notification and Prevention of Significant Deterioration (PSD)/Visibility (110(a)(2)(J))
- Air Quality Monitoring and Reporting (110(a)(2)(K))
- Permitting Fees (110(a)(2)(L))
- Consultation/Participation with Affected Local Entities (110(a)(2)(M))

### Infrastructure SIP Requirements

#### Section 110(a) Requirements

The New York State Department of Environmental Conservation (Department) has addressed the specific regulation of PM<sub>2.5</sub> in several ways. One of these was through a revision to 6 NYCRR Part 200. In this revision, subdivision 200.1(av) was amended to include the new fine particulate matter (i.e., PM<sub>2.5</sub>) NAAQS nonattainment area designation and geographic boundary as promulgated by EPA on January 5, 2005.

On March 12, 2009, New York submitted 6 NYCRR Part 231, New Source Review for New and Modified Facilities, to EPA for approval and inclusion in the SIP. This regulation meets the federal requirements for the application of PSD and New

Source Review requirements in New York and is presently in effect in New York. The application of these requirements ensures that major sources of PM<sub>2.5</sub> in the state are currently subject to PSD and NNSR permitting programs that implement the PM<sub>2.5</sub> standard as suggested by the guidance. With PSD and NNSR requirements for PM<sub>2.5</sub> now in effect in New York, the Department meets the requirement ensuring that major sources in this state will not cause or contribute to air pollution in excess of the NAAQS in New York or other states.

Additionally, new control measures have been provided for in New York's April 29, 2008 PM<sub>2.5</sub> SIP submission which contains the strategies and measures that will be implemented in New York so that the 1997 NAAQS will be met by the 2010 deadline. This SIP is presently being revised in response to EPA comments. With rules already in place along with the changes described in the next section, New York State has adequate authority to promulgate and enforce necessary rules, and programmatic "infrastructure" to implement the 2006 24-hour PM<sub>2.5</sub> NAAQS.

#### Enforceable Emission Limitations and Other Control Measures (110(a)(2)(A))

CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters. On April 29, 2008, the Department submitted the attainment SIP for the 1997 annual PM<sub>2.5</sub> NAAQS. This SIP contains the strategies and measures that will be implemented in New York so that the 1997 annual NAAQS will be met by the 2010 deadline. In the PM<sub>2.5</sub> SIP, a number of state programs and regulations are anticipated to be put in place that will provide the necessary enforceable emission limitations and other control measures for PM<sub>2.5</sub> in New York State. Other programs and regulations address PM<sub>10</sub> or PM generally are already in effect. Although not specific to PM<sub>2.5</sub>, these programs and regulations will reduce the ambient levels of PM<sub>2.5</sub> by reducing its emissions along with the emissions of PM<sub>10</sub>, PM and its precursors, resulting in the enforceable emission limits and other control measures necessary to address the 2006 PM<sub>2.5</sub> NAAQS.

In addition to state regulations, a number of enforceable federal programs are also in place that will reduce PM<sub>2.5</sub> ambient levels by controlling the emissions of PM and its precursors. These requirements are applied through New York State's federally-approved Title V program and 6 NYCRR Part 201 which provide the vehicle for enforceability of the requirements that apply to stationary sources subject to the appropriate state and federal regulations.

#### Ambient Air Quality Monitoring, Compilation, Analysis and Reporting (110(a)(2)(B))

CAA section 110(a)(2)(B) requires SIPs to include provisions to provide for the establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. This information is included in the various SIPs that have been submitted to EPA. Most recently related to PM<sub>2.5</sub>, this provision was made in the April 2008 SIP for the annual PM<sub>2.5</sub> standard (section 4.1).

The Department measures air pollutants at 80 sites across the state, using continuous and/or manual instrumentation. These sites are part of the federally-mandated National Core Sites (Ncore) multi-pollutant monitoring network and the State and Local Air Monitoring Stations (SLAMS) Network. Real-time direct reading measurements include gaseous criteria pollutants (ozone, sulfur dioxide, oxides of nitrogen, carbon monoxide), PM2.5 (fine particulate with a diameter less than 2.5 microns), and meteorological data. Filter-based PM2.5, lead, and acid deposition samples are collected manually and shipped to the laboratory for analysis. The information obtained is compared to the NAAQS and is used to determine the attainment status of areas where these pollutants are monitored.

The near real-time data for gaseous pollutants and PM2.5 are used for Air Quality Index (AQI) projection, and can be accessed by interested public on the DEC web site. The Department also provides real-time data to EPA for [AIRNOW](#) live national ozone and PM10 and PM2.5 mapping. All ambient measurements undergo data validation and are subsequently submitted to EPA's Air Quality System (AQS) for public access.

The Department commits to continue to operate an air quality monitoring network that complies with EPA requirements and to submit these data to EPA's Air Quality System.

#### Enforcement and Stationary Source Permitting (110(a)(2)(C))

CAA section 110(a)(2)(C) requires states to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet PSD and NNSR requirements.

Environmental Conservation Law (ECL) §19-0305 authorizes the commissioner of the Department to enforce the codes, rules and regulations of the Department established in accordance with this article. The SIP is a compilation of rules and regulations that are promulgated to achieve attainment of a NAAQS. Therefore, the Department has the authority to enforce all SIP measures.

On March 12, 2009, New York submitted 6 NYCRR Part 231, New Source Review for New and Modified Facilities, to EPA for approval and inclusion in the SIP. This regulation meets the federal requirements for the application of PSD and New Source Review requirements in New York and is presently in effect in New York. The application of these requirements ensures that major sources of PM2.5 in the state meet the requirements of the federal PSD and NNSR permitting programs as they apply to PM2.5. With PSD and NNSR requirements for PM2.5 now in effect in New York, the Department meets the requirement ensuring that major sources in this state will not cause or contribute to air pollution in excess of the NAAQS in New York or other states.

New York ensures that all applicable federal PSD requirements which are included in PSD permits are incorporated into Title V operating permits, and that all

federally-enforceable requirements are applied and enforced. New York therefore affirms that the current NNSR and PSD permitting programs remain in effect and continue to apply to the state's major stationary sources, and that the requirements from these programs are federally enforceable.

#### Interstate Transport (110(a)(2)(D))

CAA section 110(a)(2)(D) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state. In accordance with EPA guidance issued on August 15, 2006, states may continue to rely on their existing NNSR and PSD permitting programs to prevent significant deterioration of air quality within their own boundaries and in adjacent states. New York affirms that the currently-effective NNSR permitting program as well as the revised PSD requirements contained in 6 NYCRR Part 231 remain in effect, and continue to apply to the state's major stationary sources.

An integral part of the effort to reduce interstate transport of PM<sub>2.5</sub> and other pollution was embodied in the Clean Air Interstate Rule (CAIR). CAIR was intended to reduce particulate emissions through the control of oxides of nitrogen and sulfur oxides from large electrical generating units (EGUs). On July 11, 2008, the D.C. Circuit Court of Appeals issued a ruling that would have vacated CAIR. EPA appealed the ruling on September 24, 2008. On December 23, 2008, instead of vacating the rule, the CAIR regulations were remanded to EPA to address deficiencies identified by the court.

Although EPA's September 25, 2009 "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)" indicates that the federal CAIR program cannot be used in their infrastructure assessment, the continued applicability of the CAIR program on the federal level as well as through state CAIR rules presently in effect (6 NYCRR Part 243, CAIR NO<sub>x</sub> Ozone Season Trading Program, Part 244, CAIR NO<sub>x</sub> Annual Trading Program and Part 245, CAIR SO<sub>2</sub> Trading Program) are expected to reduce emissions according to the schedule and quantity that EPA previously contended would prevent states from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state. Thus, its use in the present infrastructure demonstration continues to be valid. Further, it should be noted that although CAIR does not directly address the 24-hour PM<sub>2.5</sub> NAAQS, it addresses the precursors of PM<sub>2.5</sub> and so its implementation can be expected to have the same protective effect on this NAAQS as it would on the annual standard. Therefore, New York's submission of a SIP satisfying CAIR's requirements on March 29, 2007 and the administration of 6 NYCRR Parts 243, 244 and 245 addresses the section 110(a)(2)(D)(i) requirement.

Furthermore, in the September 25, 2009 guidance, EPA states its intention to complete a rule to address interstate transport in the Eastern United States. EPA goes

on to say “that new rule will assist states with obligations to address interstate transport that significantly contributes to nonattainment in another state.” Since this new rule will not be done in time to address the requirements of section 110(a)(2)(D) for the 2006 24-hour PM2.5 NAAQS, New York is committing to the adoption of the measures identified by EPA as needed to address interstate transport for the 2006 24-hour PM2.5 NAAQS upon EPA’s completion of this rulemaking.

On April 29, 2008, the Department submitted a draft attainment SIP to EPA for the 1997 annual PM2.5 NAAQS. This SIP contains the strategies and measures that will be implemented in New York so that the 1997 NAAQS will be met by the 2010 deadline. EPA has commented on this submission, and the SIP is presently being revised in response to these comments. However, the emission reduction measures contained in this SIP can be expected to help to achieve compliance with the 24-hour PM2.5 NAAQS in addition to the annual PM2.5 NAAQS, and play a role in preventing interference with, or maintenance of, attainment with the 24-hour standard. These measures include:

- Subpart 227-2 Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NOx)
- Subpart 220-1 Portland Cement Plants (NOx RACT)
- Subpart 220-2 Glass Manufacturing (NOx RACT)

In addition to measures specifically intended to reduce PM2.5 emissions along with its precursors, New York submitted an attainment SIP for the 1997 ozone NAAQS for the New York Metropolitan nonattainment area on February 8, 2008. The reduction in particulate emissions associated with the control of oxides of nitrogen under these SIPs can also be expected to prevent New York from contributing significantly to nonattainment in, or interfere with maintenance of, the applicable NAAQS by any other state.

All of the above measures, taken together, will be more than adequate to meet the requirements of section 110(a)(2)(D) based on EPA’s prior CAIR assessment and the supporting effects of New York’s NNSR and PSD, and permitting programs. Additionally, the effects of emission reductions proposed in New York’s PM2.5 SIP for the annual NAAQS and 8-hour ozone SIP will ensure this.

#### Assurance of Adequate Resources (110(a)(2)(E))

CAA section 110(a)(2)(E) requires states to provide (i) necessary assurances that the state will have adequate personnel, funding and authority under state law to carry out its SIP, (ii) requirements that the state comply with the requirements respecting state boards under CAA section 128, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.

The Division of Air Resources (DAR) receives both operating and capital funding. Operating funds are allocated to DAR annually and are used for daily administrative expenses. These expenses include salaries, fringe benefits, and indirect and non-personnel services such as travel, supply and equipment costs. Indirect costs are, in turn, allocated to other Departments or divisions that support DAR activities. DAR is allocated operating funds from five sources: General Fund, Utility Environmental Regulatory Account, Co-operative Agreements (i.e., CAA section 103 and 105 grants) and the Clean Air Fund, which is comprised of the Title V and Mobile Source Accounts.

Capital funds are allocated to DAR at the discretion of the New York State legislature and are used for the financing or acquisition of capital facilities such as the construction of an air monitoring site. DAR is allocated Capital funds from three sources: General Fund, Mobile Source Account and Rehabilitation and Improvement.

Section 110(a)(2)(E)(ii) requires that the state comply with the requirements respecting state boards under CAA section 128. New York's Public Officer's Law (POL) satisfies these requirements. Specifically, POL section 74(2) states: "No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest." POL 74(3)(e) states: "No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties."

Finally, the Department confirms that where New York State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.

#### Stationary Source Monitoring System and Reporting (110(a)(2)(F))

CAA section 110(a)(2)(F) requires states to establish a system to monitor emissions from stationary sources and to submit periodic emissions reports.

Authority for this provision is provided under Article 19 of the ECL. In particular, ECL section 19-0311 [Operating Permit Program] states in section 3 that operating permits issued pursuant to this section shall include, among other things, "provisions for detailed monitoring, record-keeping and reporting, including requirements that records be kept for five years, and that monitoring records be submitted to the Department at least every six months ..." This requirement is mirrored in 6 NYCRR Part 201-6.5(b), which requires monitoring of emissions, record-keeping and reporting in permit conditions that are included in all Title V permits for major stationary sources.

The Department constructs statewide emissions inventories in order to develop

control strategies for pollutants from facilities and other stationary sources. Stationary source emissions inventories are based on actual emissions data submitted by major regulated facilities through annual emission statements, and calculated emissions from minor stationary sources based on area source procedures established by EPA. PM2.5 emissions (along with emissions of other key pollutants) are submitted to EPA through the Consolidated Emissions Regulatory Report (CERR) for uploading to EPA's National Emission Inventory.

### Emergency Powers and Contingency Plans (110(a)(2)(G))

CAA section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episodes in their SIPs. Articles 3 and 19 of the ECL provide this authority to the Department.

To further prevent and control air pollution emergencies, the Department adopted a regulation at 6NYCRR Part 207, Control Measures For Air Pollution Episode, which implements ECL section 3-0301. EPA approved this regulation as part of the New York SIP (46 FR 55690). Among other things, 6 NYCRR Part 207 requires persons who own a significant air contamination source to submit a proposed episode action plan to the commissioner, and enable the commissioner to designate air pollution episodes which trigger the action plans. The Department also maintains an Episode Action Plan with guidelines and protocols to be followed in case of an air pollution emergency. The Department's Episode Action Plan has been updated to reflect the PM2.5 Significant Harm Levels (SHLs) proposed by EPA on January 15, 2009 along with revised values for ozone episodes.

The Department's emergency action plan requires significant air contamination sources to commit to a plan containing detailed steps which will be taken by the air contamination source owner to reduce air contaminant emissions during each stage of an air pollution episode. Additionally, when weather conditions and/or the concentration of an air contaminant or contaminants are such that immediate action is necessary to prevent further increases in air contamination or damage to life, property or environmental quality, the Department designates by order that a "Forecast," "Alert I," "Alert II" or "Emergency" stage of an air pollution episode exists. In exercising such prevention and control, the Department and the commissioner may limit the consumption of fuels and use of vehicles, curtail or require the cessation of industrial processes and limit or require the cessation of incineration and open burning, and take any other action the commissioner deems necessary to prevent and/or control air pollution emergencies.

With the provision of the above measures in New York, and the incorporation of the SHLs proposed by EPA on January 15, 2009, the requirements of CAA section 110(a)(2)(G) are being met.

### Authority for SIP Revisions for Revised NAAQS (110(a)(2)(H))

CAA section 110(a)(2)(H) requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate.

Revisions to the SIP are authorized by Article 19 and sections 3-0301, 19-0103, 19-0301, 19-0303 and 19-0305 of the ECL. Article 19 of the ECL was adopted to protect New York's air resources from pollution and to put into effect the policy of the state to maintain a reasonable degree of purity of the air resources, consistent with the public health and welfare and the industrial development of the state. To this end, the Legislature gave the Department specific powers and duties, including the power to promulgate regulations for preventing, controlling, or prohibiting air pollution. The Department also has the specific authority to regulate motor vehicle exhaust and approve air contaminant control systems as well as regulate fuels. Section 71-2103 provides general enforcement authority for the air regulations. Section 71-2105 provides criminal enforcement authority. Thus, New York has the authority to revise SIPs and provide for enforcement in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate.

### Authority for SIP Revisions for New Nonattainment Areas (110(a)(2)(I))

CAA section 110(a)(2)(I) requires states to have the authority to revise their SIPs in response to changes in nonattainment areas.

Revisions to the SIP are authorized by Article 19 and sections 3-0301, 19-0103, 19-0301, 19-0303 and 19-0305 of the ECL. Article 19 of the ECL was adopted to protect New York's air resources from pollution and to put into effect the policy of the state to maintain a reasonable degree of purity of the air resources, consistent with the public health and welfare and the industrial development of the state. To this end, the Legislature gave the Department specific powers and duties, including the power to promulgate regulations for preventing, controlling, or prohibiting air pollution. The Department also has the specific authority to regulate motor vehicle exhaust and approve air contaminant control systems as well as regulate fuels. Section 71-2103 provides general enforcement authority for the air regulations. Section 71-2105 provides criminal enforcement authority. New York, therefore, has the authority to revise SIPs and provide for enforcement in response to changes in nonattainment areas.

### Consultation, Public Notification and PSD/Visibility (110(a)(2)(J))

CAA section 110(a)(2)(J) requires states to meet the applicable requirements of CAA section 121 relating to consultation, CAA section 127 relating to public information, and Part C relating to PSD and visibility protection.

CAA section 121 requires states to provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments, and any Federal Land Manager having authority over Federal land to which the state plan applies. On December 22, 2005, the Department reestablished a SIP Coordinating Council consisting of senior policy representatives from 19 state agencies and authorities, and a SIP Task Force consisting of officials from 37 local governments and designated organizations of elected officials. Periodic meetings of both groups were held during the ozone and PM2.5 SIP development period for the 1997 NAAQS, and will continue for the revised standards.

40 CFR 51.308(i) requires consultation between states, tribes and the Federal Land Managers in coordinating efforts to reduce visibility impairment in Class I areas affected by sources in New York. These parties agreed to participate in Regional Planning Organizations (RPOs) to facilitate interstate coordination on the development of Regional Haze SIPs required under Section 169A of the CAA. The State of New York participated in the coordination activities through the Mid-Atlantic/Northeast Visibility Union (MANE-VU) which is managed by the Ozone Transport Commission (OTC). Also participating in consultations were the Mid-Atlantic Regional Air Management Association (MARAMA) and the Northeast States for Coordinated Air Use Management (NESCAUM). Additional consultation was carried out by meeting with RPOs for the areas contiguous to the MANE-VU area. A number of phone calls also took place during the 60-day time period in which the Federal Land Managers were afforded the opportunity to review the draft regional haze SIP.

CAA section 127 requires state plans to contain measures which will be effective to notify the public during any calendar year, on a regular basis, of instances or areas in which any national primary ambient air quality standard is exceeded or was exceeded during any portion of the preceding calendar year. It also requires measures to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measures which can be taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality.

The Department's website, at <http://www.dec.ny.gov/chemical/34985.html>, contains an Air Quality Index (AQI) for reporting daily air quality to the public. It describes how clean or polluted the air is, and what associated health effects might be a concern. It was created as a way to correlate levels of different pollutants to one scale; the higher the AQI value, the greater the health concern. When levels of ozone and/or fine particles are expected to exceed an AQI value of 100, an Air Quality Health Advisory is issued alerting sensitive groups to take the necessary precautions. The Department, in cooperation with the New York State Department of Health, posts warnings on the above-referenced website and issues press releases to local media outlets if dangerous conditions are expected to occur. The Air Quality Forecast displays the predicted AQI value for eight regions in New York State. It also displays the observed values for the previous day. Air quality measurements from New York's statewide continuous monitoring network are updated hourly where available. Parameters monitored include ozone, fine particulate, carbon monoxide, sulfur dioxide,

nitrogen oxides, methane/nonmethane hydrocarbons, and meteorological data.

In accordance with EPA guidance issued on August 15, 2006, states may rely on their existing NNSR and PSD permitting programs to prevent significant deterioration of air quality within their own boundaries and in adjacent states. On March 12, 2009, New York submitted 6 NYCRR Part 231, New Source Review for New and Modified Facilities, to the EPA for approval and inclusion in the SIP. This regulation meets the federal requirements for the application of both PSD and New Source Review requirements in New York and is presently in effect in New York. The application of these requirements ensures that major sources of PM<sub>2.5</sub> in the state are currently subject to PSD and NNSR permitting programs that implement the PM<sub>2.5</sub> standard as suggested by the guidance.

New York commits to the continued enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NNSR and PSD requirements, incorporating the resulting requirements into New York State's Title V operating permits.

The Department, in cooperation with the Federal Land Managers and other states throughout the Mid-Atlantic Northeast Visibility Union (MANE-VU), developed a control strategy that will result in the reduction in visibility impairment in federal Class I areas by reducing the emissions of particulate matter, including PM<sub>2.5</sub>, and its precursors. This control strategy is being incorporated into New York's Regional Haze SIP. The improvement in visibility is projected to follow the "glide path" that is necessary to return visibility conditions to the pre-industrial state by 2064. This strategy includes a number of control measures to which New York has committed that will enable New York to meet its obligation to avoid any interference with measures in the applicable SIP for another state designed to "protect visibility" or the PM<sub>2.5</sub> NAAQS.

At this time, the Federal Land Managers of the Class I areas whose visibility may be impacted by sources in New York State have completed their review, and the required public hearing for the submission will be held shortly prior to submission to the EPA. With the submission of its regional haze SIP, New York will have met the requirements suggested in EPA's guidance for demonstrating that the state's PM<sub>2.5</sub> SIP does not interfere with a visibility impact reduction measure being taken by other states.

#### Air Quality Modeling / Data Submission (110(a)(2)(K))

CAA section 110(a)(2)(K) requires states to provide for the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS. It also requires states to submit, upon request, data related to such air quality modeling to the Administrator.

The Department certifies that the air quality modeling and analysis used in its

SIPs complies with EPA's guidance<sup>1</sup> on the use of models in attainment demonstrations, and commits to continue to use air quality models in accordance with EPA's approved modeling guidance and to submit data to the Administrator if requested.

#### Permitting Fees (110(a)(2)(L))

CAA section 110(a)(2)(L) requires states to require each major stationary source to pay permitting fees sufficient to cover the reasonable costs of reviewing, planning, approving, implementing and enforcing permits.

The Environmental Conservation Law (ECL) satisfies this requirement. ECL section 19-0311(c) requires the Department to promulgate regulations that, among other things, require applications to identify and describe facility emissions in sufficient detail to establish the basis for the fees and applicability of requirements of the CAA. ECL section 72-0303 requires major stationary sources to pay operating permit program fees in an amount sufficient to cover the costs of the operating permit program.

In addition, paragraph 201-6.5(a)(7) of 6 NYCRR Subpart 201-6, the Department's approved Title V program, specifically states that "The owner and/or operator of a stationary source shall pay fees to the department consistent with the fee schedule authorized by Subpart 482-2 of this Title."

New York commits to continue to implement major stationary source permit fee regulations.

#### Consultation / Participation by Affected Local Entities (110(a)(2)(M))

CAA section 110(a)(2)(M) requires states to provide for consultation and participation by local political subdivisions affected by the plan.

The Department established an Inter-agency Consultation Group (ICG) pursuant to 6 NYCRR Part 240, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved under Title 23 U.S.C. or the Federal Transit Laws." Members of this group include the Federal Transit Administration, Federal Highway Administration, the New York State Department of Transportation, the United States Environmental Protection Agency, the New York State Department of Environmental Conservation, and several Metropolitan Planning Organizations statewide. The ICG is central to the entire transportation conformity process, and serves as the underpinning for conformity determinations and as the primary mechanism for ensuring early coordination and negotiation among all parties affected by transportation conformity, including the general public, the business community, and other interested parties.

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<sup>1</sup> US EPA 2007. "Guidance on the use of models and other analyses for demonstrating attainment of air quality goals for ozone, PM<sub>2.5</sub> and regional haze." EPA-454/B-07-002.

Additional consultation and participation by local political subdivisions are provided through the SIP Task Force that was established on December 22, 2005, which consists of officials from thirty-seven local governments and designated organizations of elected officials. Meetings and conference calls are held at appropriate times as SIPs are being developed or issues arise.

The Department commits to continue to provide for consultation and participation in the SIP development process by local political subdivisions.