

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 Broadway
Albany, New York 12233-1550

In the Matter

- of the -

PROPOSED REVISION TO STATE
IMPLEMENTATION PLAN for FINE PARTICULATE MATTER
LESS THAN 2.5 MICRONS IN SIZE (PM 2.5)
for NEW YORK METROPOLITAN AREA - COUNTIES OF
SUFFOLK, NASSAU, RICHMOND, NEW YORK, KINGS, QUEENS,
BRONX, ORANGE, WESTCHESTER and ROCKLAND

HEARING REPORT

- by -

_____/s/_____
Helene G. Goldberger
Administrative Law Judge

July 14, 2008

Background

The New York State Department of Environmental Conservation (DEC or Department) is proposing to revise the State Implementation Plan (SIP) for fine particulate matter less than 2.5 microns in size (PM 2.5). This proposed SIP revision is entitled "New York State Implementation Plan for PM 2.5 (annual National Ambient Air Quality Standard [NAAQS] Attainment Demonstration for the New York Metropolitan Area & Clean Air Act Section 110(a) Infrastructure Assessment." The Department staff puts forward this proposal to meet the requirements of section 182 of the Clean Air Act Amendments of 1990. The New York metropolitan area consists of Suffolk, Nassau, Richmond, New York, Kings, Queens, Bronx, Orange, Westchester, and Rockland.

Hearing Notice

Notice of these hearings was published in the June 4, 2008 *New York Post*, *Newsday*, and the *Journal News*. In addition the hearing notice was also published in the June 4, 2008 *Environmental Notice Bulletin*. Written comments will be received by Department staff through July 17, 2008 at 5:00 p.m.

Hearng:

The one scheduled hearing took place on July 10, 2008 at 2:00 p.m. at the NYSDEC Annex, Region 2, 11-15 47th Avenue, Long Island City, NY 11101.

DEC Administrative Law Judge (ALJ) Helene G. Goldberger presided over this hearing. In addition to Department staff, there were seven members of the public in attendance and four offered comments. To begin the comment session, Matthew Reis, the DEC Chief of the SIP Planning Section in the Division of Air Resources, made a statement. Mr. Reis explained that in July 1997, the United States Environmental Protection Agency (EPA) promulgated NAAQS for particulate matter equal to or less than 2.5 microns in size otherwise known as PM 2.5. These standards require that concentrations of this pollutant in the ambient air not exceed 65 micrograms per cubic meter on a daily basis, calculated as the 3-year average of the 98th percentile of 24-hour concentrations. Also included is an annual standard of 15 micrograms per cubic meter, calculated as the 3-year average of annual mean PM 2.5 concentrations.

Mr. Reis stated that when a new or revised NAAQS is promulgated by EPA, the Clean Air Act (Act or CAA) requires the states to submit a SIP to EPA that is consistent with the requirements of the Act. The purpose of the SIP is to set forth the strategy that the State will implement to bring areas that

are out of attainment with the relevant standard into compliance. Because the New York metropolitan area is out of compliance with the annual NAAQS for PM 2.5, the Department is submitting this revised SIP.

Mr. Reis stated that the proposed SIP revision is in compliance with the Act. He explained that it includes inventory data for base and projection years for sources of PM 2.5 and its precursors, proposed enforceable emission reduction measures and limits, and modeling results that show the effect of the control measures needed to reach attainment. Mr. Reis said that the modeling performed by staff indicates that compliance with the NAAQS will be achieved by 2010. He provided that compliance will be attained through measures that are already in place as well as new ones described in the revised SIP.

Mr. Reis stated that the second purpose of this public comment period is to solicit comments on the Department's justification of excluding ambient air quality monitoring data that was collected on July 6-9, 2002 due to the large forest fires that raged in Canada at that time.

Finally, Mr. Reis provided that the last purpose of the public comment period was to solicit input on the Act's Section 110 "Infrastructure" demonstration that is contained in the SIP. He explained that CAA §§ 110(a)(1) and (2) contain requirements that must be met by SIP submissions. He advised that the proposed SIP contains those provisions.

Maron Greenleaf of WE ACT for Environmental Justice was the first public speaker. Ms. Greenleaf applauded DEC's efforts but stated the SIP proposal does not go far enough. Ms. Greenleaf emphasized the detrimental health effects of particulates especially for people who live in low-income communities. She provided 6 items that she stated required revision. First, Ms. Greenleaf stated that the SIP should specifically identify the environmental justice impacts from PM 2.5 pollution. Her next criticism was that the federal annual standard is too high (15 micrograms per cubic meter) and that New York should adopt the California standard of 12 micrograms per cubic meter. Ms. Greenleaf's third proposal was that the SIP should require that the neighborhoods with the highest concentrations of PM 2.5 have monitors at the street level and that all hot spots are identified. Ms. Greenleaf next recommended that the SIP provide for adequate public participation with the cooperation of all stakeholders and that specific provisions are noted for how the public's voice will be included. Her next comment was that there needed to be a public notification provision for how communities

would be alerted of dangerous pollution conditions and how to include them in mitigation strategies. She noted that internet alerts is insufficient for disadvantaged low-income residents. Ms. Greenleaf's last suggestion was that the SIP must include provisions that ensure that New York City remains in attainment with respect to the annual NAAQS.¹ Ms. Greenleaf noted that this achievement was made possible by the retrofitting of old vehicles and purchase of new, cleaner fuel vehicles; however, growth in the future could result in this improvement being "chipped away." She recommended that specific programs of PlaNYC be codified to ensure continued improvements in air quality such as: "upgrading city vehicles, using cleaner energy for power and heat, instituting a 'comprehensive energy efficiency plan' for power plants, creating an 'Energy Planning Board' and an 'Energy Efficiency Authority' and reducing sulfur content in home heating oils." In addition, she recommended that DEC include New York City's laws on diesel retrofitting for buses and construction equipment in the SIP.

Mel Peffers of Environmental Defense Fund (EDF) was the next speaker - she is the Air Quality Project Manager for EDF. Ms. Peffers thanked the Department for the opportunity to submit comments; however, she emphasized that the SIP was not ready for submission to EPA. Ms. Peffers stated that even with the modeling results performed by the Department it was clear that attainment would not be reached by 2010. She stressed that DEC should "go back to the drawing board." Ms. Peffers criticized the roof location of monitors stating that they should be at street level. She stated that the monitoring results show that in the locations that are hardest hit such as near highways, bridges, etc. the trend is not downward. She stated that the protocol is usually to site monitors away from these areas but that these micro-environments with dense populations are "killing us." Ms. Peffers spoke about the health risks associated with fine particulate matter caused by diesel pollution. She stated that mobile vehicle emission budgets were critical to an effective SIP. Ms. Peffers questioned why the software used in the Department's modeling effort was not available to the public. She stated that without access to this software it was impossible to review the modeling. She stated that EDF intends to follow up these oral comments with a written submission.

¹ This appears to be an error as Department staff noted that it is the 24-hour standard that the State has met and that the revised SIP is proposed to address non-compliance with the annual standard.

Ms. Christine Berthet, Co-Chair of Manhattan Community Board No. 4's Transportation Committee provided the next comments. Ms. Berthet began her remarks by stated that CB 4 was pleased with the State's efforts to reduce PM 2.5 in New York City. She stressed that her neighborhood had the third highest incidence of asthma in Manahattan. Due to the proximity of the Port Authority bus terminal, the Lincoln Tunnel, the many parking garages, and hundreds of idling charter buses, Ms. Berthet stated this issue was crucial to the health of the residents. Ms. Berthet provided that CB 4 wants a number of additional items in the SIP. These are: installation of monitors near the Lincoln Tunnel and the Port Authority bus terminal - she stressed that there are many more truck trips through the Lincoln Tunnel than the Holland Tunnel; to add to Section 6.5 - continue and strengthen parking restrictions in order to limit vehicle miles traveled (VMT) in the Manhattan Central Business District. In addition to the restriction on off-street parking below 60th Street, Ms. Berthet requested that garages be required to comply with LEED by reserving space for bicycles, high occupancy vehicles, and low emission vehicles; automated shut-off mechanisms for buses, vans, and trucks; require that the Port Authority and the City build a charter bus garage in midtown to address idling of these vehicles; and reopen Holland Tunnel to local truck traffic. In addition, Ms. Berthet asked that DEC monitor street level rather than roof level measurements; develop sustainable model for freight shipments (Cross Harbor Rail Freight Tunnel); eliminate multiple sanitation pickups at same locations; implement innovative approaches to reduce VMT such as high occupancy vehicle lanes, reduce car use by city employees, eliminate parking placards, encourage development close to mass transit through incentives; and designate more road space for public transportation and bicycles. Ms. Berthet concluded by stating that these comments were developed by CB 4's transportation committee and that they would be ratified at the July meeting.

The last speaker was Daniel Gutman who also stated that the SIP modeling does not project compliance. He stated that section 6.4 does not conform to EPA's guidance - he characterized it as vague, subjective, lacking in numerical detail, unconvincing and completely inadequate. Mr. Gutman testified that the regulations governing SIP submissions require that all reasonably available control technology (RACT) should be included. He stated that the list in section 6.5 of measures included in modeling should be considered RACT and that other strategies not included should be so included. He agreed with Ms. Berthet that the parking restrictions for the Central Business District, that were part of 1979 SIP and mentioned in the 1992 CO2 maintenance plan, should be included in section 6.5 as an ongoing commitment.

The public hearing concluded at approximately 2:45 p.m.