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**MEETING MINUTES**

**8-Hour Ozone National Ambient Air Quality Standard Implementation  
Conference Call  
May 1, 2002**

**INTRODUCTION**

The United States Environmental Protection Agency (EPA) and stakeholder organizations in California held a conference call on May 1, 2002 from 12:00 p.m. until 2:00 p.m. The meeting was held to solicit comments on various options to implement the 8-hour ozone national ambient air quality standard (NAAQS). The options contain EPA's preliminary views and were used to initiate a dialogue on approaches for implementing the 8-hour ozone NAAQS. EPA is interested in hearing the views of interested stakeholders on the options and their ideas on how to best implement the 8-hour ozone NAAQS consistent with the February 2001 Supreme Court decision.

**ATTENDEES**

See attached lists.

**DISCUSSION**

**Implementation Status (John Silvasi)**

- Mike Brady (California Department of Transportation): If EPA does final designations in 2004, will conformity apply in the new areas in 2005?
  - John Silvasi and Laura Berry answered yes, there is a one-year grace period.
  
- David Schonbrunn (Transportation Solutions Defense and Education Fund): Clarify the design value method.
  - John Silvasi explained that the 8-hour standard is a concentration-based rather than a exceedance-based standard. A daily value is the maximum 8-hour concentration within a day. To determine the design value, take a year's worth of the daily 8-hour values and rank them highest to lowest. Ascertain the fourth highest day in the year. Do this for three years, then take the average of the fourth high values. This average of fourth highest values is the design value that is compared to the standard. The design value is calculated at each monitor site in a county or area. If there are several monitoring sites within a county or area, then the monitor with the highest value is used to determine the design value.

- David Schonbrunn (Transportation Solutions Defense and Education Fund): Which years of data are used to develop the design value?
  - ▶ John Silvasi said that EPA will use the most recent quality assured data that is available at the time areas are designated.
- Dan Kovacich (Shasta County RTPA): When will new areas be designated nonattainment for the 8-hour standard?
  - ▶ John Silvasi replied in the 2004 time frame--no earlier than 2003.

### **Classifications for Nonattainment Areas (John Silvasi)**

- Mike Brady (California Department of Transportation): Please clarify if the following assumptions are correct. If an area falls under subpart 2, they must meet all of the specific requirements under subpart 2 based on the classification. Also, if an area falls under subpart 1, the area has more flexibility.
  - ▶ John Silvasi replied that this is generally correct. An area classified under subpart 1 still has NSR, conformity, RACM, VOC, and reasonable further progress requirements (but it is not the 15% VOC per year for the first 6 years, and 3% thereafter requirement). The area must do an attainment demonstration and must attain as expeditiously as practical.
- Edie Chang (California Air Resources Board): Is there a difference in dealing with conformity under subpart 1 vs. subpart 2?
  - ▶ Laura Berry said no, subpart 1 is the area of the CAA that contains the conformity requirements. If an area is designated nonattainment then conformity applies.
- Ilene Gallo (Caltrans, HQ): Clarify if new 8-hour nonattainment areas (areas currently attainment for the 1-hour standard) will fall under subpart 1 or subpart 2.
  - ▶ John Silvasi answered that it depends on the option used and the area's 1-hour or 8-hour design value. Under option 1, if the area is in attainment for the 1-hour standard, they would fall under subpart 1. Under option 2, classification would depend upon the area's 8-hour design value, but all areas will fall under subpart 2. Under option 4 (the hybrid approach), depending how the option is structured, the area may fall under either subpart. Keep in mind that several national rules will help to bring areas into attainment.
- Mike Brady (California Department of Transportation): Under the hybrid approach, if an area is attainment or unclassified, but there is information that the area is violating the 1-hour standard, will the area fall under subpart 1 or subpart 2?
  - ▶ John Silvasi said that if the area's 1-hour design value is above the 0.121, the area will fall under subpart 2.

- Mike Brady (California Department of Transportation): Will EPA classify such an area (an area that has never been designated as nonattainment but is violating the 1-hour standard) under the 1-hour standard?
  - ▶ John Silvasi said the CAA gives EPA the discretion to redesignate an area from attainment to nonattainment or vice versa. EPA generally works with areas in this situation to resolve the problem without designating the area nonattainment.

#### **Transition from the 1-Hour to the 8-Hour NAAQS (John Silvasi)**

- Edie Chang (California Air Resources Board): Please clarify the impacts of revocation in the following situation. An area is nonattainment for the 1-hour standard and has requirements under subpart 2 that are not yet fulfilled. If the 1-hour standard is revoked do those requirements disappear because the standard has gone away, or do the subpart 2 requirements continue apply?
  - ▶ John Silvasi said that EPA has no definitive answer. We are looking for suggestions. One commenter at an earlier public meeting suggested that if there is a commitment in a 1-hour SIP to submit rules at a future date, that commitment should continue to be honored.
- Doug Eisinger (Sonoma Technology, Inc.): Please clarify that the 8-hour standard is more stringent than the 1-hour standard. If there is a way for the 8-hour standard to replace the 1-hour standard, a level of health protection is provided, conformity problems may be avoided, and we will not have overlapping standards.
  - ▶ John Silvasi said that the 8-hour standard bring mores areas into nonattainment than are currently nonattainment for the 1-hour standard. Nonattainment areas under the 8-hour standard appear to be larger than current 1-hour nonattainment areas. EPA's health experts would probably say that the 8-hour standard is more protective of public health than the 1-hour standard.
- Charles Keynejad (Southern California Association of Governments): Please clarify the following situation. A 1-hour nonattainment area has a SIP in place. If the 1-hour standard is revoked at the time of the 8-hour designation, what happens to the control measures?
  - ▶ Laura Berry also expressed concern about the control measures. If the 1-hour standard is revoked and the 8-hour standard applied, EPA would have to develop some other type of conformity test.
  - ▶ Sarah Schneeberg stated that if the 1-hour standard is revoked, the measures contained in the 1-hour SIP will remain until the area can show that removal of the measures will not interfere with attainment and maintenance of the 8-hour standard. It is unlikely that an area could make this showing until they give EPA their 8-hour SIP. In the interim, should EPA revoke the standard and have the

area subject only to the 8-hour standard before the area has an 8-hour SIP, it is unlikely that the area could get rid of the specific measures in their 1-hour SIP.

- ▶ Doug Eisinger (Sonoma Technology, Inc.): Commented that the situation described by Ms. Schneeberg would work well if EPA revoked the 1-hour standard at the same time that 8-hour designations are made.
  - ▶ Sara Schneeberg stated that it works for the measures, but not necessarily for conformity. EPA will need to figure out if an area should use the 1-hour budgets or do a build/no-build test. These are issues that EPA has not yet addressed.
  
- Mike Brady (California Department of Transportation): Commented that it is clear that for conformity, if the 1-hour standard is revoked and the emission budgets go away, we are back under conformity to a build/no-build and or less than base year.
  - ▶ Sara Schneeberg stated that this is true under the current rule. However, EPA will make revisions to the rule to deal with the 8-hour standard. Right now those revisions are up in the air. One of the options that may be discussed is to use the old 1-hour budget as a surrogate, because it would be better than build/no-build, until EPA gets an 8-hour SIP.
  
- Edie Chang (California Air Resources Board): If the 1-hour conformity budget is part of the SIP, doesn't that become part of anti-backsliding? Ms. Schneeberg made clear that measures in the 1-hour SIP remain, but what about commitments in the 1-hour SIP?
  - ▶ Sara Schneeberg stated that the budget is part of the SIP but the obligation to do conformity only exists with respect to the designation. You don't have to do conformity for the 1-hour standard once the designation is revoked. In answer to the second question, EPA has not discussed commitments in the SIP. It may depend on the commitment.
  
- Edie Chang (California Air Resources Board): Concerned that if the 1-hour standard and associated 1-hour SIP requirements are revoked too quickly momentum toward attainment will slow. If an area has 15 years under subpart 2 to attain the 8-hour standard, we are slowing down control programs. Our control programs need to continue, we cannot afford to slow down.
  
- ▶ Doug Eisinger (Sonoma Technology, Inc.): Suggests that the 1-hour emission budgets and SIP commitment remain until the 8-hour SIP is approved. This would provide a consistent structure that conformity could follow.
  
- Mike Brady (California Department of Transportation): Commented that the group seems to be moving toward option 2, in which EPA revokes the 1-hour standard when the 8-hour SIP is approved. If everything in the 1-hour SIP remains in effect until the 8-hour

SIP is approved then in effect the 1-hour standard remains in effect. Why not make this official?

- Charles Keynejad (Southern California Association of Governments): Agrees with Mr. Brady. Option 2 is the most viable. Revoke the 1-hour standard at the time of the 8-hour SIP approval. Regarding conformity, for current 1-hour nonattainment areas, the rule should provide the option to continue demonstration of ozone attainment with the 1-hour emission budget analysis, then change over when we have 8-hour SIPs with a new budget in place. This is crucial with option 2.
  - ▶ Laura Berry summarized Mr. Keynejad's suggestion. When areas are designated under the 8-hour standard, conformity for the 8-hour standard will apply one year later. You are suggesting that until the area has an 8-hour budget, the area would continue to show conformity using the 1-hour budget.
- ▶ John Silvasi posed the following situation (which may not be a problem in California where 8-hour nonattainment area will probably be the same size as the 1-hour nonattainment areas). In some parts of the country, the 8-hour nonattainment area may enclose the 1-hour nonattainment area. Under option 2, the larger 8-hour nonattainment area would have a conformity requirement but no budget at that point. The inner 1-hour nonattainment area would still have the 1-hour budgets. Is this a potential problem?
  - ▶ Laura Berry responded that this is a potential problem. EPA will have to come up with a mechanism to solve this problem.
- ▶ Charles Keynejad (Southern California Association of Governments): Suggests that EPA provide areas with options and flexibility for conformity rather than a one-way method.
- ▶ Mike Brady (California Department of Transportation): I hearing that commenters would prefer not to have a situation where an area is dealing with an existing set of 1-hour budgets and in the same area has to do a build/no-build for the 8-hour after the grace period is over. To determine conformity for both at the same time is double jeopardy.
  - ▶ Laura Berry replied that EPA is aware of this issue. Please provide your ideas.
- Carl Selnick (San Diego County Air Pollution Control District): Problems are created by the assumption that all areas will be designated nonattainment for the 8-hour standard at the same time, in approximately 2004, whether or not they have attained the 1-hour standard. Suggests a new option, that EPA not designate all areas at the same time, but wait until each area has attained the 1-hour standard, has its maintenance plan approved, and prepares and submits their 8-hour SIP prior to designation. Thus, an area would attain the 1-hour standard, prepare its 1-hour maintenance plan, simultaneously prepare its 8-hour SIP, and submit both to EPA. When EPA approves the 1-hour maintenance plan and the 8-hour SIP, EPA would revoke the 1-hour designation and put into effect the 8-hour designation. Under this option, there are never overlapping designations, areas

don't have to do conformity for two different standards at the same time, and has all of the advantages of the 8-hour designation being done only when there is a SIP available for emission budgets. In addition, this options allows for coordination between 1-hour or 8-hour ozone SIPs and PM SIPs.

- Tom ??? (Santa Barbara): Asked what would happen under this scenario if an area submitted the maintenance plan but found that it was in attainment for the 8-hour standard.
- Carl Selnick (San Diego County Air Pollution Control District): Responded that if an area is in attainment for the 8-hour standard, the whole 8-hour standard issue is not relevant. The area would follow its 1-hour maintenance plan. The 1-hour standard can be revoked because the 1-hour maintenance plan stays in effect.
  - ▶ John Silvasi said that his understanding of Section 107 of the CAA, requires designations to be made within a certain time period after promulgation of the revised standard. How would Mr. Selnick's approach fit into this legal structure?
- Carl Selnick (San Diego County Air Pollution Control District): Replied that the question is answered in two ways. EPA could propose designations and 1-hour standard revocations according to the originally intended schedule, but don't finalize them for nonattainment areas until after 1-hour attainment. Also, EPA already has a flex policy in place that allows areas to agree to a delay in their designation for an agreed period of time. Presentation slides on this options were submitted to EPA.
  - ▶ Tom Helms said that it is not quite so simple. There are a lot of things that must be done such as modeling the area, getting an inventory--it's a fairly tall hurdle.
  - ▶ John Silvasi asked Mr. Selnick to email his comments to the docket office.
- David Schonbrunn (Transportation Solutions Defense and Education Fund): In the San Francisco Bay area the 8-hour design value is proportionally much lower than the 1-hour design values. The 8-hour standard appears to be less protective than the 1-hour standard. Please comment.
  - ▶ John Silvasi commented that the San Francisco Bay area is in the process of developing a 1-hour implementation plan to achieve the 1-hour standard. Once the plan is approved by EPA, the requirements in the plan will stay in place under the anti-backsliding provision. The 1-hour requirements can only be removed through a demonstration that no other standard will jeopardized. Also, because the area will be designated nonattainment for the 8-hour standard, the state is required develop a plan to address the 8-hour standard.
- David Schonbrunn (Transportation Solutions Defense and Education Fund): Suggests that EPA's transition options may be moving too quickly to eliminate the 1-hour standard and implement the 8-hour standard, which may not be more protective or more stringent

in all cases. Concerned about the suggestion that the 8-hour designation take effect only after an area has attained the 1-hour standard. Waiting for attainment of the 1-hour standard will not provide measures quickly enough to reduce emissions.

- ▶ John Silvasi said that EPA understands the issue and asked Mr. Schonbrunn to put his comments in writing and send them to the docket office for consideration.

### **Transportation Conformity (Laura Berry)**

- ▶ Charles Keynejad (Southern California Association of Governments): Suggests that EPA's rulemaking say that areas where the 1-hour standard is revoked and where no maintenance plans is in effect, are still be eligible for CMAQ funds.
- ▶ Mike Brady (California Department of Transportation): Agrees with Mr. Keynejad, adding that there is precedent for this. EPA classified the Bay area as Moderate for CMAQ purposes without making it a formal classification.
- ▶ Yvonne Braithwaite Burke (South Coast Air Quality Management District): Will there be additional CMAQ funds based on the new 8-hour nonattainment areas?
- ▶ Charles Keynejad (Southern California Association of Governments): Responded that EPA cannot resolve this issue. Transportation agencies are approaching Congress to try to get an increase in funding.
- ▶ Edie Chang (California Air Resources Board): Please clarify how EPA will develop the conformity guidance. Will there be an opportunity for public participation?
  - ▶ Laura Berry responded that EPA will probably follow a 1997 process. White papers were prepared and circulated, conference calls were held with stakeholders, and EPA received lots of public input. We will definitely give everyone the opportunity for input.
- ▶ Edie Chang (California Air Resources Board): Encouraged EPA to come up with a final proposal before nonattainment area boundaries and classifications must be made. Conformity will be a big factor in how we draw up the nonattainment boundaries.
- ▶ Charles Keynejad (Southern California Association of Governments): Will transportation conformity be addressed in the proposed rulemaking to be released in Summer 2002?
  - ▶ Laura Berry said conformity will be addressed separately. It is not yet clear if the guidance will take the form of a rulemaking. This will provide a second opportunity to comment on the 8-hour ozone rule.
- ▶ Charles Keynejad (Southern California Association of Governments): What is the timetable for the transportation conformity guidance.

- ▶ Laura Berry said there is no timetable established but the guidance will certainly be available before areas are designated and EPA will consider Ms. Chang's suggestion that the guidance be available before the states must give their recommendations.
- Edie Chang (California Air Resources Board): Asks EPA to consider how new rural 8-hour nonattainment areas (affected by transport) will apply transportation conformity.
  - ▶ Laura Berry said that the current conformity rule contains information on how rural areas implement transportation conformity.
- Cynthia Gomez (California Department of Transportation, Native American Liaison Branch): Given that most of California is nonattainment and there are 109 reservations located in those areas, what direct access to CMAQ funds do Tribes have?
- Bob O'Loughlin (Federal Highway Administration, San Francisco): Responding to Ms. Gomez's question about Tribal access to CMAQ funds, said that the funds are apportioned to each state based on weighted population in nonattainment and maintenance areas. Within California there is a state law that sub-allocates the CMAQ funds to nonattainment and maintenance areas based on the Federal formula. Tribal government can access CMAQ funds through the planning process and working with the MPO because the funds are sub-allocated to the MPOs.
- Cynthia Gomez (California Department of Transportation, Native American Liaison Branch): This has caused a problem in some areas because Tribal governments and MPOs have not always made good partnerships.
- Cynthia Gomez (California Department of Transportation, Native American Liaison Branch): Is EPA considering the impacts of nonattainment designations on Tribes? Has concerns similar to those listed in the Tribal issue paper.
  - ▶ John Silvasi responded that EPA has formed an internal work group to address Tribal concerns regarding the impacts of nonattainment designations on Tribes. Where possible, the results of the work group will find its way into the rulemaking. Send written comments to the docket.
- ??: If designations occur in 2004, is there a problem with reauthorization of TEA-21 in 2003?
- Bob O'Loughlin (Federal Highway Administration, San Francisco): Responded to the question. Timing is not an issue. The reauthorization funding formula will recognize that eventually there will be 8-hour areas designated nonattainment.

**Transport (John Silvasi)**

- ???: We have no sources to control. The problem originates in the Valley and is transported to us.
  - ▶ Tom Helms replied that transport is a difficult issue that EPA is working on. In this situation, EPA has the authority to do a SIP call and ask the state to submit a plan for the area.
  
- Charles Keynejad (Southern California Association of Governments): Regarding attainment dates, it may not be feasible to provide large nonattainment areas for downwind and upwind with a single SIP. The question is which attainment date is the further out that can be applied. Suggests that EPA provide the same attainment date for both upwind and downwind areas using whichever date is further out.
  - ▶ John Silvasi stated that EPA tried this in the attainment date extension policy which approved an extended attainment date for the Washington D.C. metropolitan area. The Agency is currently in litigation over the policy.
  
- Mike Brady (California Department of Transportation): It is clear that many rural downwind areas cannot attain the standard until upwind attains. Recommends a change in the legislation if it is needed to address this issue.

**Final Remarks**

- John Silvasi asked that any additional comments be emailed to the docket office at A-and-R-docket@epa.gov.
  
- Charles Keynejad (Southern California Association of Governments): Will send comments by May 3, 2002.

**ATTENDANCE LIST**  
**8-HOUR OZONE NAAQS IMPLEMENTATION**  
**CONFERENCE CALL--CALIFORNIA STAKEHOLDERS**  
**May 1, 2002**

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<b>EPA ATTENDANCE LIST 8-HOUR OZONE NAAQS IMPLEMENTATION CONFERENCE CALL--CALIFORNIA STAKEHOLDERS May 1, 2002</b>	
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Laura Berry	EPA/OTAQ
Denise Gerth	EPA/OAQPS
Tom Helms	EPA/OAQPS
Karina O'Connor	EPA/Region 9
Sarah Schneeberg	EPA/OGC
John Silvasi	EPA/OAQPS
Barbara Bauer	Pechan