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Air Quality State Implementation Plan Revisions Report

Submitted pursuant to the provisions of

C.R.S. 25-7-133

Submitted to the Colorado Legislature
by the Air Quality Control Commission
January 15, 2005

Introduction

The Colorado Air Quality Control Commission appreciates the opportunity to submit the following report describing the revisions made to the air quality State Implementation Plan (SIP), pursuant to the provisions of 25-7-133, C.R.S. This report describes four actions taken to revise the State Implementation Plan in the period from January 2004 through December 2004. This report also lists the statutory language that identifies the requirements for making the report to the legislature and the requirements of the report's content.

Requirement

25-7-133. Legislative review and approval of state implementation plans and rules - legislative declaration.

(1) Notwithstanding any other provision of law but subject to subsection (7) of this section, by January 15 of each year the commission shall certify in a report to the chairperson of the legislative council in summary form any additions or changes to elements of the state implementation plan adopted during the prior year that are to be submitted to the administrator for purposes of federal enforceability. Such report shall be written in plain, nontechnical language using words with common and everyday meaning that are understandable to the average reader. Copies of such report shall be available to the public and shall be made available to each member of the general assembly. The provisions of this section shall not apply to control measures and strategies that have been adopted and implemented by the enacting jurisdiction of a local unit of government if such measures and strategies do not result in mandatory direct costs upon any entity other than the enacting jurisdiction.

(2) (a) By the February 15 following submission of the certified report under subsection (1) of this section, any member of the general assembly may make a request in writing to the chairperson of the legislative council that the legislative council hold a hearing or hearings to review any addition or change to elements of the SIP contained in the report submitted pursuant to subsection (1) of this section. Upon receipt of such request, the chairperson of the legislative council shall forthwith schedule a hearing to conduct such review. Any review by the legislative council shall determine whether the addition or change to the SIP element accomplishes the results intended by enactment of the statutory provisions under which the addition or change to the SIP element was adopted. The legislative council, after allowing a public hearing preceded by adequate notice to the public and the commission, may recommend the introduction of a bill or bills based on the results of such review. If the legislative council does not recommend introduction of a bill under this subsection (2), the addition or change to the SIP element may be submitted under paragraph (b) of this subsection (2). Any bill recommended for consideration under this subsection (2) shall not be counted against the

number of bills to which members of the general assembly are limited by law or joint rule of the senate and the house of representatives. If the legislative council does not recommend the introduction of a bill under this paragraph (a), and the member or members of the general assembly that requested such review will be introducing a bill under the provisions of paragraph (c) of this subsection (2), any such member shall provide written notice to the chairperson of the legislative council within three days after the action by the legislative council not to recommend introduction of a bill. If such member or members provide such written notice, the addition or change to the SIP or any element thereof that is the subject of any such bill may not be submitted to the administrator of the federal environmental protection agency until the expiration of the addition or change to the SIP has been postponed by the general assembly acting by bill or the member or members provide written notice to the chairperson of the executive committee of the legislative council that no bill will be introduced.

(b) Unless a written request for legislative council review of an addition or change to a SIP element is submitted by the February 15 following submission of the report under subsection (1) of this section, or a notice is provided by a member or members that they are introducing a bill under paragraph (c) of this subsection (2) within three days after legislative council action not to introduce a bill under paragraph (a) of this subsection (2), all other additions or changes to a SIP element described in such report shall be submitted to the administrator for final approval and incorporation into the SIP.

(c) Until such February 15 as provided in paragraph (b) of this subsection (2), the commission may only submit an addition or change to the SIP or any element thereof, as defined in section 110 of the federal act, any rule which is a part thereof, or any revision thereto as specified in subsection (1) of this section to the administrator for conditional approval or temporary approval. If legislative council review is requested as to any addition or change to a SIP element under paragraph (a) of this subsection (2), then no such SIP, revision, rule required by the SIP or revision, or rule related to the implementation of the SIP or revision so submitted to the administrator may take effect for purposes of federal enforceability, or enforcement of any kind at the state level against any person or entity based only on the commission's general authority to adopt a SIP under section 25-7-105 (1), unless expiration of the SIP, rule required for the SIP, or addition or change to a SIP element has been postponed by the general assembly acting by bill in the same manner as provided in section 24-4-103 (8) (c) and (8) (d), C.R.S. Any member of the general assembly may introduce a bill to modify or delete all or a portion of the SIP or any rule or additions or changes to SIP elements which are a component thereof. Any bill introduced under this paragraph (c) shall not be counted against the number of bills to which members of the general assembly are limited by law or joint rule of the senate and the house of representatives. Any committee of reference of the senate or the house of representatives to which a bill introduced under this paragraph (c) is referred shall conduct as part of consideration of any such bill on the merits the review provided for under paragraph (a) of

this subsection (2). If any bill is introduced under paragraph (a) of this subsection (2) or under this paragraph (c) to postpone the expiration of any addition or change to a SIP element described in a report submitted under subsection (1) of this section or paragraph (d) of this subsection (2), and any such bill does not become law, the addition or change to a SIP element addressed in such bill may be submitted to the administrator of the federal environmental protection agency for final approval and incorporation into the SIP under paragraph (b) of this subsection (2).

State Implementation Plan Revisions

1. New Source Review Permitting Requirements

On April 16, 2004 the Commission considered and adopted a proposal to revise the permitting requirements to incorporate the federal revisions to the New Source Review permitting program into the provisions of its Regulation Number 3; Stationary Source Permitting and Air Pollutant Emission Notice Requirements. The U.S. EPA promulgated the proposed revisions to the State Implementation Plan on December 31, 2002. The Commission considered testimony over a two-day period from several parties to the rulemaking hearing and interested members of the public. The revisions added provisions to the regulation that will provide additional flexibility to regulated facilities in complying with the state and federal permitting requirements. The Commission adopted a provision that allows a facility to group all of its emission sources on a pollutant-specific basis and establish one overall limit with which to measure compliance versus previous provisions that required emission limitations on individual emission sources at a facility. The Commission adopted a provision that allows a facility to forego the analysis and installation of the best available emission control technology in cases where it has previously installed this type of emission control equipment in the past ten years. The Commission adopted a provision that allows a facility to establish its emission baseline using any two-year period in the past ten years versus the most recent two year period. The baseline emission calculation is used when a facility is planning to expand or upgrade its air pollutant operations. The baseline emission calculation serves as a starting point to determine if the emission source will exceed a predetermined threshold of emission increases that would require the source to analyze and install the best available emission control technology. The Commission adopted a provision that would allow sources to conduct pollution control projects that would achieve a decrease in one pollutant and not require the mitigation on any collateral increases in another pollutant.

2. Long Term Strategy for the Protection of Visibility in Class I Areas

On August 19, 2004 the Commission considered and adopted a proposal from the Division to revise the Long Term Strategy for the Protection of Visibility in National Parks and Wilderness Areas (Class I Areas). This program is designed to address visibility impairment that can be traced back to an individual facility in the area of the National Park or Wilderness Area. The Commission adopted a revision to the State Implementation Plan, but did not adopt any new or revised regulatory requirements. The Commission did adopt new data and an analysis by the Division that indicates that visibility impairment is getting worse in three areas of the State; Rocky Mountain National Park, Great Sand Dunes National Park, and Mesa Verde National Park. The analysis performed by the Division shows that the visibility in these parks is getting worse on the days when visibility is rated in the poor category. However, the analysis also showed that the visibility in these areas is getting better on the days when visibility is rated in the good category. The analysis conducted by the Division demonstrated that the worsening visibility on the bad days was caused by pollutants that are transported into the area from sources throughout the region or by regional haze. The Commission and Division will address the worsening visibility in these areas in the Regional Haze State Implementation Plan element that is due to the U.S. Environmental Protection Agency by January 2008. This plan will be submitted for legislative review in the 2007 legislative session.

3. Regulation Number 3: Permitting & Air Pollution Emission Notice Requirements

On December 16, 2004 the Commission considered and adopted revisions to the permitting program to clarify the requirements that apply to air pollution emission sources in areas of the state that have been returned to compliance with the national standard for a pollutant versus those areas that are out of compliance with one of the national air quality standards. Some areas of the State that have historically experienced problems maintaining compliance with the national ambient air quality standards and subsequently are now monitoring compliance with the national standard have reduced requirements to limit, monitor and/or report their emissions of air pollutants. The Division had received comments from interested members of the public and the regulated community that there was confusion over which requirements applied and when they applied. These revisions were offered with the intention of only providing clarification to the regulation. The Commission also adopted a revision to the regulation that provides newly regulated oil and gas emission sources a longer period of time to submit documentation identifying the amount of pollutants that they are emitting into the atmosphere. There were two interested parties to the rulemaking hearing that were supportive of the proposed revisions.

4. Ozone Action Plan (Ozone Early Action Compact)

On December 16, 2004 the Commission considered and adopted a proposal by the Division to revise the requirements of its Regulation Number 7; concerning "Emissions of Volatile Organic Compounds", to address comments from the U.S. Environmental Protection Agency regarding the approval of the Ozone Action Plan adopted by the Commission in March of this year and approved by the legislature in 2004 HB 1435. The Commission adopted revisions to the rule that provide greater definition of what and when records are required to be maintained and reported to the Division. The Commission adopted revisions to the regulation that required companies to demonstrate that required emissions reductions are achieved on a daily basis during the summertime high ozone season versus on an annual basis. The Commission adopted revisions to require facilities that choose to use alternative emission control technologies or pollution prevention to document their intended programs in a permit application that would be submitted to the Division then EPA for approval. The Commission also adopted revisions to the regulation to make it clearer and easier to implement.