

EPA PROTOCOL
REVIEW AND RULEMAKING ACTION ON 309 SIPs

March 2003
(Final Version: 3/31/03)

INTRODUCTION

The purpose of the protocol is to facilitate the process of developing the Section 309 Regional Haze State Implementation Plans (309 SIPs) due to EPA by December 2003. The protocol describes EPA's collaborative approach internally and with our state partners to review and take action on the 309 SIPs. EPA will make this draft version available for discussion and agreement during March 2003.

GOALS & OBJECTIVES

Our goal is to assist participating states in developing approvable 309 SIPs that meet all federal requirements within the statutory deadlines. A number of important objectives support this goal. These objectives are to ensure that:

- SIPs ensure reasonable progress to improve visibility in 16 class I areas on the Colorado Plateau;
- SIPs are legally defensible, federally enforceable and consistent with applicable legal requirements;
- SIPs do not set a negative precedent in any area;
- EPA regional offices are consistent in reviewing and acting on the SIPs;
- States identify early on where SIPs deviate from the model rules and templates;
- SIP development and review process is an efficient use of resources; and
- Tribes can participate in the 309 program.

BACKGROUND

The protocol is in response to requests from our state partners to ensure the western regional offices use a consistent process to review and take action on the 309 SIPs. We currently anticipate receiving 309 SIPs from four western states in four different EPA regions. These states are New Mexico in Region 6, Utah in Region 8, Arizona in Region 9, and Oregon in Region 10. We believe the regional nature of the state plans as developed through the WRAP is conducive to a collaborative and streamlined review process. Lessons learned in the 309 process also should benefit our approach to reviewing the Section 308 SIPs in the future.

EPA has corresponded previously with the Western Regional Air Partnership (WRAP) and the Western States Air Resources Council (WESTAR) regarding a protocol and numerous regulatory questions. Correspondence includes a letter dated October 16, 2002, on the 309 SIP process from Ms. Bonnie Thie, Acting Air Director in Region 10, and to Ms. Lynn Terry, President of WESTAR. Lydia Wegman, Director, Air Quality Strategies and Standards Division at EPA, has responded to regulatory questions in two letters dated June 7 and July 31, 2002, to

Mr. Rick Sprott of Utah, and a letter dated July 31, 2002 to Ms. Sandra Ely of New Mexico. Another useful reference is Region 10's Final Report on the *State Implementation Plan Process Improvement Project*.

APPROACH

EPA Commitment: EPA will continue to work collaboratively with the WRAP, and individually with states, to develop the 309 SIPs. To clarify federal requirements, we are willing to review and comment on draft SIPs prior to the submittal deadline. The regional offices agree to coordinate their review of the 309 SIPs to ensure regional consistency in evaluating the plans before and after the SIPs are submitted. We will make every effort to streamline review and expedite rulemaking on final SIPs that conform to WRAP products. At the same time, we must independently review the adequacy of SIPs in EPA's public rulemaking process and consider all comments on a plan in determining if it meets applicable requirements. Our approach to regional consistency is explained more fully on the next page.

Our EPA 309 SIP Team consists of representatives from the four western regional offices as well as staff with policy, technical and legal expertise at our headquarters. We also are establishing a group of SIP experts to provide special assistance on planning issues. Ongoing EPA commitments to participating early and actively in the 309 SIP process include:

- WRAP Board Meetings;
- WRAP Committee, Forum and Work Group Meetings (including STIP II);
- WESTAR Council Meetings;
- WRAP and WESTAR Grant Funds and Grant Reviews;
- National Coordination for Regional Planning Organizations; and
- Regional Coordination for Tribes.

EPA Expectations: To ensure timely and consistent review of 309 SIPs, EPA asks that the states indicate as early as possible where a plan deviates from the WRAP's regional approach (e.g., as characterized in WRAP policy documents, the Model Rule, and SIP/TIP Template). In order to plan our review of draft products as well as the final submittal, we need to know each state's schedule and specific needs for assistance. Our ability to streamline the review process depends on early identification of issues, and clear and timely communication on their resolution. To this end, our most recent response to the list of 309 questions is adjoined to the protocol. Productive and efficient collaboration on the 309 SIPs requires commitments by EPA, states and tribes to coordinate and communicate effectively.

TRIBES

EPA will work with tribes to develop an *EPA Protocol for 309 Tribal Implementation Plans*. In the meantime, EPA will continue to assist tribes in understanding the ramifications of participating in the 308 and 309 programs. EPA sent letters to all the tribes located in the WRAP region informing them of the regional haze process, and offering assistance. Within the WRAP region, there are four existing major SO₂ sources on three reservations (APS Four

Corners and APS Navajo Generating Station in the Navajo Nation; Koch Sulfur Products Company on the Wind River Reservation; and Bonanza Power plant on the Ute Indian Tribe of the Uintah and Ouray Reservation). EPA expects to hold discussions with these tribes and engage in the consultation process as appropriate. Depending on tribal requests, EPA could develop a Federal Implementation Plan (FIP) to provide for tribal participation in the 309 program.

PROCESS FOR REGIONAL CONSISTENCY

A major challenge for EPA, states and tribes is to ensure that separate 309 SIPs result in a regional plan that will improve visibility at national parks and wilderness areas across the West. In particular, the western regional offices must coordinate their efforts to evaluate consistently the 309 SIPs in a regional context based on the goals and objectives stated above. Our efforts to achieve regional consistency during the drafting and after submittal are outlined below:

- *Establish 309 SIP Review Team:* EPA has established a group of SIP liaisons known as the 309 SIP Review Team to participate on the STIP II Work Group. We have one SIP liaison from each regional office: Joe Kordzi (Region 6), Laurie Ostrand (Region 8), Wienke Tax (Region 9), and Steve Body (Region 10). The 309 SIP Review Team will assist the work group and will accumulate knowledge and experience for our respective regional planning offices which will eventually review the state plans. Our existing EPA 309 SIP Team which consists of EPA members and contacts throughout our regional and national offices will provide policy and technical support to the 309 SIP Review Team.
- *Designate Regional Haze Rule Experts:* EPA is designating a group of internal consultants among regional office staff active in the WRAP who will have responsibility for specific sections of the rule. These individuals will research the rule requirements and WRAP products in their area of responsibility in order to coordinate the resolution of policy or technical issues within EPA.
- *Ensure Timely Legal Advice to Identify and Resolve Legal Issues:* We are establishing stronger links with our Office of General Counsel (OGC) and our four western Offices of Regional Counsel (ORCs) in order to identify and resolve legal issues as early as possible. EPA attorneys representing these offices will serve as official contacts for regional haze issues requiring legal opinions.
- *Support State and Tribal Coordination:* We encourage states (and tribes as appropriate) as they develop their plans to share information with other states to ensure regional consistency. States have a greater accountability to each other in regional planning. Coordination already underway through STIP II as well as other WRAP and WESTAR groups will enhance EPA's efforts to streamline the rulemaking process.
- *Develop Procedures to Review Draft and Final 309 SIPs:* The 309 SIP Review Team which has representatives from the four western regional offices will provide guidance and consultation to the STIP II Work Group. The Team will regularly communicate

internally to ensure, to the extent possible, that the regional review of draft and final 309 SIPs is conducted in a consistent manner. The Team will identify and work to resolve issues prior to a 309 SIP submittal. As part of the regulatory process, each 309 SIP will undergo a separate public review at the State and federal levels which will allow other States and EPA to provide additional comments on consistency. Decisions regarding the approval of individual 309 SIPs will reside with the appropriate EPA Regional Office in consultation with the Office of Air Quality Planning and Standards and OGC.

SCHEDULE

The tasks outlined below are specific to the 309 SIP review and approval process. In addition, EPA will continue its broader efforts through the WRAP and WESTAR as listed under *Approach*.

PHASE ONE: JANUARY - MARCH 2003

- Complete Protocol with state input
- Complete EPA response to WRAP questions
- Review and comment on 309 SIP Template of STIP II Work Group
- Review and comment on Technical Support Documentation

PHASE TWO: APRIL - DECEMBER 2003

- Identify potential issues regarding 309 SIPs
- Review and comment on draft 309 SIPs
- Hold internal meetings and calls to coordinate review
- Provide status reports to WRAP and WESTAR

PHASE THREE: BEGINNING JANUARY 2004

- Review official 309 SIP submittals
- Hold internal meetings and calls to coordinate review
- Provide status reports to WRAP and WESTAR
- Take action on 309 SIPs