Transport Webinar with States

US EPA

March 26, 2013

Introduction

- EPA has scheduled this webinar as a prelude to the two air quality transport meetings with States in April:
  - April 8, 2013 in RTP
  - April 17, 2013 in Denver
- In this webinar, we will provide an overview of the legal context, technical elements, and proposed agenda topics for the meeting
- This background information is intended to help you prepare for the meeting and promote a productive discussion on the important and complex issues related to addressing interstate transport

Purpose of Upcoming Meetings

- To obtain input from the States on key technical questions and regulatory options regarding our shared responsibility under the Clean Air Act (CAA) to address interstate transport of air pollution.

Overview

- Legal Context
- Preview of Issues to Discuss at Meetings
- Wrap Up

Legal Context: Requirements of Section 110 (a)(2)(D)(i)(I)

- Section 110(a)(2)(D)(i)(I) (the "good neighbor "provision) of the Clean Air Act requires every state's SIP to:
  - "…contain adequate provisions … prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will … contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any [NAAQS]"
- "Good neighbor" SIPs are required for each pollutant covered by a NAAQS (including each revision) and must also address identified precursors to those pollutants
- The "good neighbor" provision applies to all states regardless of whether they contain nonattainment areas

Legal Context: Transport SIP Submissions

- Pursuant to *Homer City*, a state is not required to submit a 110(a)(2)(D)(i)(I) SIP until EPA defines its obligation under that provision
- EPA's transport rule must quantify states' 110(a)(2)(D)(i)(I) duties with sufficient specificity to trigger the SIP submission obligation
- The *Homer City* decision says:
  - "EPA's quantifying of a State's good neighbor obligation and setting of a State's emissions budget is what 'require[s]' the State to make a 'submission' implementing [the good neighbor provision]." 696 F.3d at 30-31.
  - "A SIP logically cannot be deemed to lack a required submission . . . before EPA quantifies the good neighbor obligation." *Id.* at 32.
  - "[T]he good neighbor obligation is not a clear numerical target—far from it—until EPA defines the target." *Id.* at 32.
  - "In both situations – setting a NAAQS and defining States' good neighbor obligations – EPA sets the numerical end goal." *Id.* at 33.

Legal Context: Upwind State Transport Obligations

- Each state has an obligation to prohibit emissions that "significantly contribute to nonattainment" or "interfere with maintenance" of the NAAQS in another state
- The *Homer City* decision discusses how each upwind state's obligation should be identified. The court stated:
  - "EPA may not force any upwind State to 'share the burden of reducing other upwind states' emissions.' Each upwind State must bear its own fair share." 696 F.3d at 21 (citations omitted)
  - "[T]he end goal of the statute is attainment in the downwind State. EPA's authority to force reductions on upwind States ends at the point where the affected downwind state achieves attainment." *Id.* at 20.
  - "[I]n order to prevent exorbitant costs from being imposed on certain upwind States, EPA may lower the obligations imposed on those States." *Id.* at 22.
- Under *Homer City*, EPA's role is to quantify each state's obligation and the state's role, in turn, is to satisfy that obligation as defined by EPA -- not to redefine or re-quantify the obligation.

Preview of Topics to Discuss at Meetings

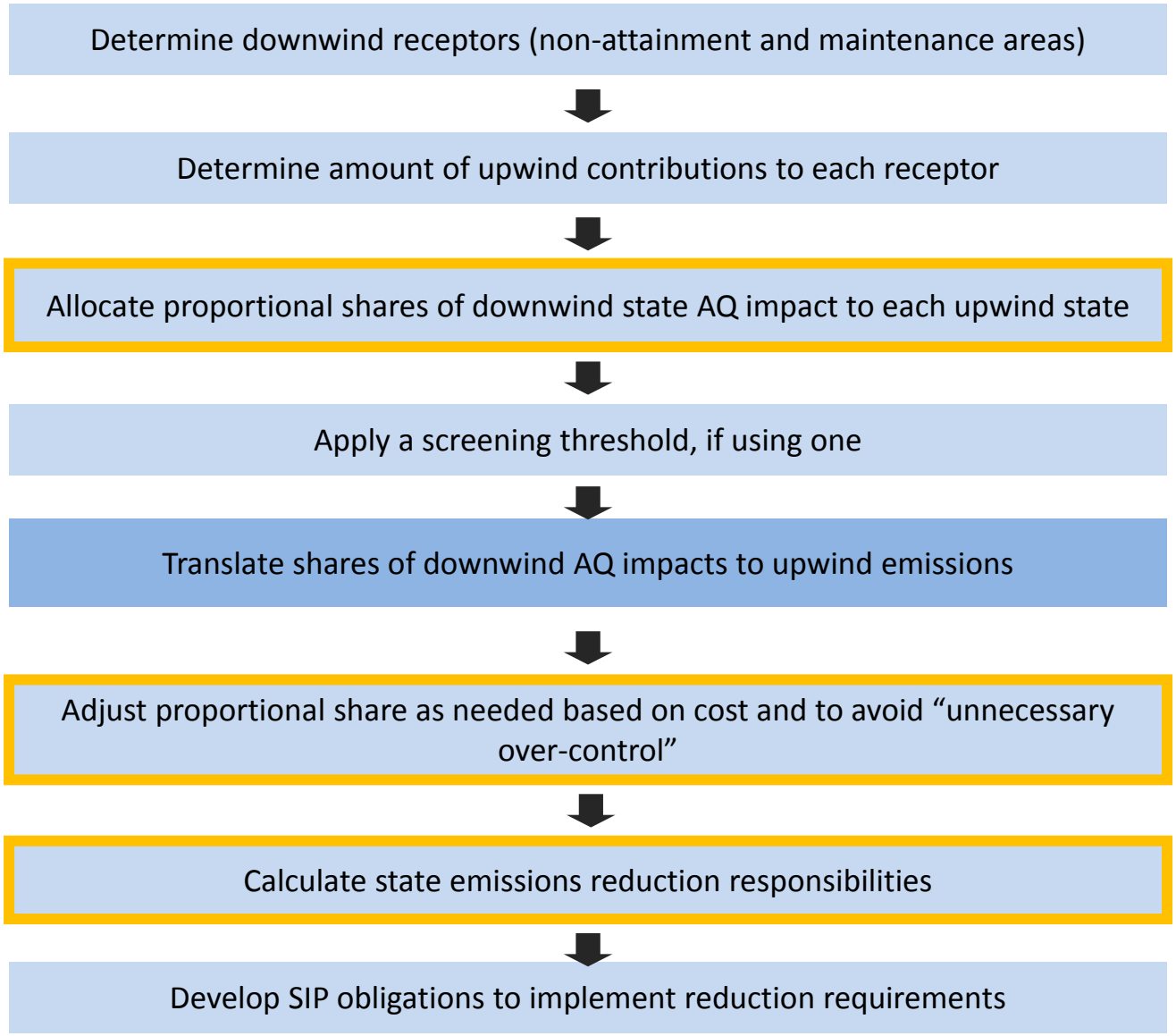
April 8, 2013 in RTP

April 17, 2013 in Denver

Outline of Steps for Addressing Transport

- Defining the Obligation
  - Identify monitoring sites (i.e., receptors) with projected nonattainment and/or maintenance problems
  - Quantify the contribution from emissions in each upwind state to projected nonattainment/maintenance at downwind receptors
  - Determine upwind state responsibility (e.g., emission reductions or air quality improvements) consistent with the *EME Homer City* decision.
    - Quantify each upwind state's proportional share with respect to each receptor, to ensure no upwind state is required to address more than its proportional share. *See* 396 F.3d at 21.
    - If a screening threshold is used (e.g., in CSAPR the threshold was 1% of the NAAQS), ensure no state is required to reduce its emissions below that threshold. *See id*. at 25.
    - Consider whether individual state's obligations should be further lowered based on cost considerations. *See id.* at 21-22.
    - Evaluate whether collective reductions would result in "unnecessary over control." *See id*. at 22.
- Once the obligation is defined, implementation requires:
  - Additional SIP regulations to provide enforceable mechanism to achieve needed emission reductions within the state

Steps for Addressing Transport: Focus of State Meetings



Format for Expressing Upwind States' Obligation

- How should each upwind state's obligation be expressed?
  - Air quality targets
  - Emissions reduction responsibilities

Addressing Proportionality

- How to interpret the *Homer City* concept of proportionality:
  - Transported precursor emission levels? (e.g., NO_X)
  - NAAQS pollutant concentrations? (e.g., ozone)
- How should multiple linkages be balanced "proportionally"?
- How should we account for the proximity of emissions to receptors?
- How to address local and "home" state pollution when calculating "proportionality"?
- Should we use a screening threshold? If so, how does this decision affect "proportionality"?

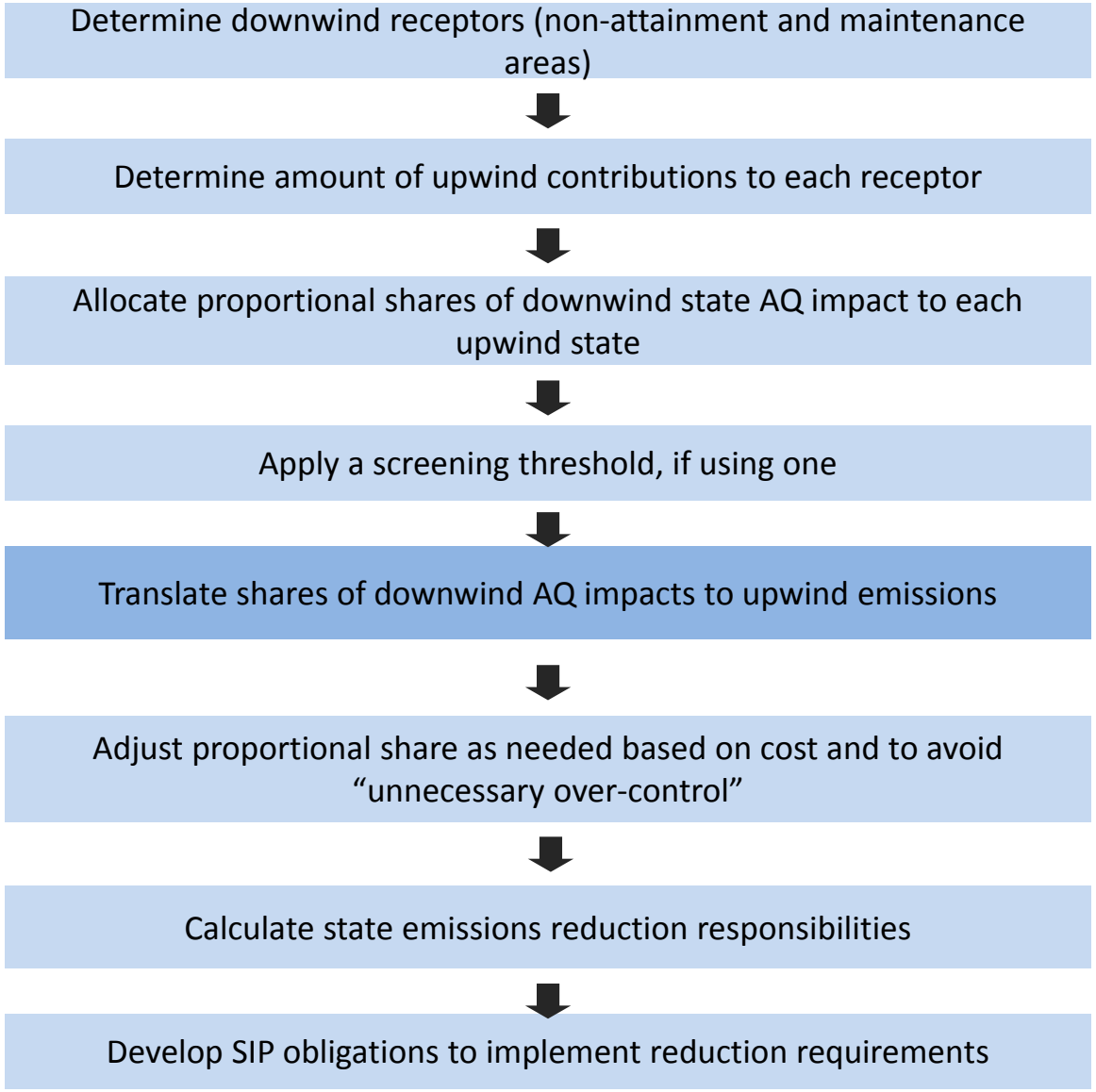
Consideration of Cost

- How do we consider cost in determining emission reductions and how does it affect a state's obligation?
- How do we choose a cost metric?

Avoiding Unnecessary "Over-control"

- How do we determine whether a set of upwind state obligations would lead to over control?
- If over-control is identified, how would we adjust that obligation to avoid over-control while still ensuring all significant contribution is eliminated?
- How should EPA address proportionality when making any adjustments to avoid over-control?

EPA and State Roles and Responsibilities



- What are the respective roles and responsibilities of EPA and the states in this process?
- Where in this process does it make sense for EPA to hand responsibility over to the states?

Key Issues for Technical Analysis

- What future year(s)?
- What baseline?
  - How do we account for interaction of other CAA rules, (CAIR, MATS, Regional Haze, Tier 3, etc.), state rules, current CAIR reductions?
- Other?

Wrap Up

Draft Agenda for RTP and Denver Meetings

10:00 – 10:30	Welcome, Introductions and Meeting Overview
10:30 – 11:00	Goals in Addressing Transport
11:00 – 12:00	State and EPA Roles, Responsibilities, and Timing Considerations
12:00 – 1:00	Working Lunch
1:00 – 3:30	General Discussion on State Contributions and Obligations
3:30 – 4:00	Wrap up and Next Steps

Meeting and Registration Information

- Monday, April 8, 2013, 10:00 am - 4:00 pm
  EPA Facility in Research Triangle Park (RTP), NC

- Wednesday, April 17, 2013, 10:00 am - 4:00 pm
  Crowne Plaza Denver, Denver, CO

- To register for one of these meetings, or for more information about these meetings, please contact Nancy Perry at (919) 541-5628