

Contingency Measures – Considerations for Revised National Policy

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Overview

- EPA is in the process of revising its national policy regarding contingency measures
 - Applicable to O3 nonattainment areas classified as “serious” and above
- The CAA requires that a contingency measure is triggered whenever a nonattainment area fails to meet a major milestone or attain the standard by the required deadline
- EPA has historically interpreted the amount of emission reductions that a contingency measure should achieve as being equal to 3% of baseline emissions

Given the maturity of air quality programs, it is virtually impossible to find that amount of emission reduction as contingency

Background on Contingency Measures

- Introduced in the 1990 Clean Air Act Amendments
- Nothing in the Clean Air Act defines the amount of emission reductions that contingency measures should achieve
- EPA's interpretation dates to the original implementation rule post the adoption of the 1990 amendments
 - Established as equivalent to 3% baseline emission
 - Rationale: 3% baseline is equivalent to RFP in "moderate" areas
 - Interpretation hasn't changed in 30 years

Case Law Constraints

Bahr case:

Cannot rely on already-implemented measures for CM

AIR case:

Struck EPA's approval of a CM less than 3% of baseline

Concerns

Given the maturity of air quality programs, it is often difficult for areas to find measures that can provide additional emission reductions of 3% of baseline

- Areas in higher classification of ozone nonattainment have typically taken all feasible measures
- Many regions are in nonattainment due to sources beyond their control

EPA appears to consider the AIR case as requiring CM in the range of their existing policy as the court rejected a CM less than 3% baseline

- Court held that EPA failed to provide a rational basis for deviating from prior guidance; did not provide direction regarding the level of emissions needed

Current Situation

With current policy on contingency unclear, difficult to know what to submit

- South Coast is withdrawing contingency measures pending at EPA because EPA can't approve lacking final guidance
- We cannot provide CM at 3% of baseline

EPA convened an internal working group to revise contingency policy; appears to be close to finalizing

- Did not seek input from state/local agencies
- Seems to recognize the difficulty of achieving 3% of baseline emission reductions
- But also prioritizes uniform national policy

Considerations for Revised Policy

- Is a national uniform policy on contingency appropriate?
 - Should the bar for contingency be the same across “serious” to “extreme” classifications?
 - Should there be consideration for the amount of emission reductions already taken?
 - What if failure to meet milestones or to attain is entirely due to federal sources?
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