

New York, to submit for EPA approval a State Implementation Plan (SIP) revision that includes measures to implement the Clean Fuel Fleet program (CFFP). Under this program, a certain specified percentage of vehicles purchased by fleet operators for covered fleets must meet emission standards that are more stringent than those that apply to conventional vehicles. Covered fleets are defined as fleets of 10 or more vehicles that are centrally fueled or capable of being centrally fueled. The program applies in the New York portion of the New York-Northern New Jersey-Long Island nonattainment area beginning in 1999. Section 182(c)(4)(B) of the Act allows states to "opt out" of the CFFP by submitting for EPA approval a SIP revision consisting of a program or programs that will result in at least equivalent long term reductions in ozone-producing and toxic air emissions as achieved by the CFFP. The Clean Air Act directs EPA to approve a substitute program if it achieves long-term reductions in emissions of ozone-producing and toxic air pollutants equivalent to those that would have been achieved by the CFFP or the portion of the CFFP for which the measure is to be substituted.

The State of New York submitted on November 13, 1992 a SIP revision which committed it to submit a substitute program or programs in lieu of the CFFP, or the CFFP itself, by May 15, 1994. Prior to EPA action on New York's commitment, the Court of Appeals for the District of Columbia ruled that EPA's conditional approval policy in general was contrary to law. [*NRDC v. EPA*, 22 F.3d. 1125 (D.C. Cir. 1994)]. The court held that a bare commitment from a state was not sufficient to warrant conditional approval from EPA under section 110(k)(4) of the Act. Therefore, following this decision, EPA could not approve New York's commitment of November 1992.

However, in fashioning a remedy for EPA's improper use of its conditional approval authority, the *NRDC* Appellate court did not want to penalize the states for their reliance on EPA's actions. EPA also does not believe that New York should lose its opportunity to opt out of the CFFP with a substitute program that meets the requirements of section 182(c)(4)(B) because of EPA's failure to act on New York's commitment, especially since New York has, in reliance on EPA advice, submitted such a substitute program for EPA approval prior to any EPA action on the commitment.

Therefore, EPA will consider all submissions made thus far by the State that are intended to substitute for the

CFFP, including that of May 15, 1994 which transmitted the New York State Code of Rules and Regulations Part 218, the State's low emission vehicle program and the submission of August 9, 1994, supplementing the May 1994 submittal, in conjunction with the November 1992 commitment.

The Act requires states to observe certain procedural requirements in developing implementation plan revisions for submission to EPA. Sections 110(a)(2) and 172(c)(7) of the Act require states to provide reasonable notice and opportunity for public comment before accepting the submitted measures. Section 110(1) of the Act also requires states to provide reasonable notice and hold a public hearing before adopting SIP provisions.

EPA must also determine whether a state's submittal is complete before taking further action on the submittal. See section 110(k)(1). EPA's completeness criteria for SIP submittals are set out in 40 CFR Part 51, Appendix V (1993).

## II. State Submittal

New York submitted a SIP revision on May 15, 1994 (and supplemented it on August 9, 1994) which substituted a low emission vehicle (LEV) program for the light duty vehicle portion of the CFFP. The State adopted the LEV program, New York's Part 218, "Emission Standards for Motor Vehicles and Motor Vehicle Engines," on April 28, 1992. New York held public hearings on February 8 and 9, 1993 and on January 11, 1994 to entertain public comment on its 1992 and 1993 SIP revisions, respectively; these hearings included the State's proposal to opt out of the CFFP with LEV as a substitute program. EPA reviewed the State's submission for completeness, in accordance with the completeness criteria, and on September 1, 1994 found the submittals to be complete. EPA notified New York in writing of this finding.

New York's submittal divides the CFFP into two separate requirements; that portion which applies to light duty fleet vehicles, and a second requirement for heavy duty fleet vehicles. This interpretation is provided for in sections 182 and 246 of the Clean Air Act (see part III. of this notice, "Analysis of State Submission"). The State exercised its choice to substitute enough emission reduction credit from its LEV program for the light duty portion of the CFFP. New York has not submitted a substitute for the heavy duty portion of the CFFP. Nor has the State adopted the heavy duty fleet program.

## III. Analysis of State Submission

Section 182(c)(4) of the Clean Air Act, which allows states required to implement a CFFP to "opt out" of the program by submitting a SIP revision consisting of a substitute program, requires that the substitute program result in emission reductions equal to or greater than does the CFFP. Also, EPA can only approve such substitute programs that consist exclusively of provisions other than those required under the Clean Air Act for the area. New York's LEV program satisfies both of these requirements as they pertain to the light duty portion of the fleet program.

Section 182(c)(4)(B) states that a measure can be substituted for all or a portion of the CFFP, and such a substitute program will be approvable if it achieves long-term emission reductions equivalent to those that would have been achieved by the portion of the CFFP for which the measure is to be substituted. Section 246 implies that the CFFP can be subdivided into a light duty vehicle portion (up to 8,500 pounds gross vehicle weight rating (GVWR)) and a heavy duty vehicle portion (from 8,501 pounds GVWR to 26,000 pounds GVWR). This is made apparent most notably by section 246(f)(2)(B), which restricts the use of Clean Fuel Fleet credits generated for either light or heavy duty fleet vehicles to those classes, respectively. Credit trading between weight classes is prohibited.

In recognizing the severable nature of the CFFP, New York has chosen to submit a substitute measure, the State's LEV program, that is intended to substitute for only the light duty portion of the CFFP. The State must therefore implement a heavy duty CFFP which also complies with section 246 of the Clean Air Act. New York is currently required by state law to adopt and implement a heavy duty fleet program and consequently has not chosen to opt-out of the heavy duty portion of the CFFP. However, the State has not yet adopted a heavy duty fleet program (New York's Clean Air Compliance Act called for adoption of the heavy duty fleet program by May 15, 1994).

New York, in exercising its option under section 177 of the Clean Air Act, has adopted a LEV program which affects all new light duty vehicles, specifically passenger cars and light duty trucks under 6,000 lbs. GVWR for vehicle model years 1994 and later. The LEV program is a far reaching, technology-forcing program designed to improve the emissions performance of vehicles over a long period of time. The