

date certain. That interpretation was challenged in the *Natural Resources Defense Council v. Browner* consolidated lawsuits brought in the United States Court of Appeals for the District of Columbia Circuit. In a full opinion dated May 6, 1994 (and in a March 8, 1994 and April 22, 1994 Amended order issued earlier) the court found that USEPA's conditional approval interpretation exceeded USEPA's statutory authority. While the court opinion did not specifically address the VMT offset program in its opinion or orders, USEPA believes that the courts general conclusion that the Agency's construction of the conditional approval provision was unlawful, and precludes USEPA from taking action to approve any submitted VMT offset committal sip revision request.

On October 4, 1993 the USEPA published a proposed rule (58 FR 51593) to conditionally approve Wisconsin's commitment for the VMT Offset requirement. In light of the court opinion, USEPA has decided not to go forward with the conditional approval of the VMT Offset committal SIPs, but believes that it would be appropriate to interpret the VMT Offset provisions of the Act to account for how States can practicably comply with each of the provision's elements, as discussed in detail below.

The VMT Offset provision requires that States submit by November 15, 1992 specific enforceable TCMs and Strategies to offset any growth in emissions from growth VMT or number of vehicle trips, sufficient enough to allow total area emissions to comply with the RFP and attainment requirements of the Act. The USEPA has observed that these three elements (i.e. offsetting growth in mobile source emissions, attainment of the RFP reduction, and attainment of the ozone National Ambient Air Quality Standard (NAAQS) create a timing problem of which Congress was perhaps not fully aware. As discussed in USEPA's April 16, 1992 General Preamble to Title I, ozone areas affected by this provision were not otherwise required to submit SIPs that show attainment of the 1996 15 percent Rate-of-Progress (ROP) milestone until November 15, 1993 and likewise are not required to demonstrate post-1996 RFP and attainment of the NAAQS until November 15, 1994. The SIP revisions due on November 15, 1993 and November 15, 1994 are broader in scope than growth in VMT or vehicle trips in that they necessarily address emissions trends and control measures for non motor vehicle emissions sources and, in the case of attainment

demonstrations, complex photochemical modeling studies.

The USEPA does not believe that Congress intended the VMT Offset provisions to advance the dates for these broader submissions. Further, USEPA believes that the November 15, 1992 date would not allow sufficient time for States to have fully developed specific sets of measures that would comply with all of the elements of the VMT Offset requirements of section 182(d)(1)(A) over the long term. Consequently, USEPA believes it would be appropriate to interpret the Act to provide the following alternative set of staged deadlines for submittal of the elements of the VMT Offset SIP.

## II. Review Criteria

Section 182(d)(1)(A) sets forth three elements that must be met by a VMT Offset SIP. Under USEPA's alternative interpretation, the three required elements of section 182(d)(1)(A) are separable, and can be divided into three separate submissions that could be submitted on different dates. Section 179(a) of the Act, in establishing how USEPA would be required to apply mandatory sanctions if a State fails to submit a full SIP, also provides that the sanctions clock starts if a State fails to submit one or more SIP elements, as determined by the Administrator. The USEPA believes that this language provides USEPA the authority to determine that the different elements of the SIP submissions are separable. Moreover, given the continued timing problems addressed above, USEPA believes it is appropriate to allow States to separate the VMT Offset SIP into three elements, each to be submitted at different times: (1) The initial requirement to submit TCMs that offset growth in emissions; (2) the requirement to comply with the 15 percent periodic reduction requirement of the Act; and (3) the requirement to comply with the post-1996 periodic reduction and attainment requirements of the Act.

Under this approach, the first element, the emissions growth offset element, was due on November 15, 1992. The USEPA believes this element is not necessarily dependent on the development of the other elements. The State could submit the emissions growth offset element independent of an analysis of that element's consistency with the RFP or attainment requirements of the Act. Emissions trends from other sources need not be considered to show compliance with this offset element. As submitting this element does not implicate the timing problem of advancing the deadlines for RFP and attainment demonstrations,

USEPA does not believe it is necessary to extend the statutory deadline for submittal of the emissions growth offset element. The first element requires that a State submit a revision that demonstrates the trend in motor vehicle emissions from a 1990 baseline to the year for attaining the NAAQS for ozone. As described in the General Preamble, the purpose is to prevent growth in motor vehicle emissions from canceling out the emissions reduction benefits of the federally mandated programs in the Act. The USEPA interprets section 182(d)(1)(A) to require that sufficient measures be adopted so that projected motor vehicle VOC emissions will never be higher during the ozone season in 1 year, than during the ozone season in the year before. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented. The emissions level at the point of potential upturn becomes a ceiling on motor vehicle emissions. This requirement applies to projected emissions in the years between the submission of the SIP revision and the attainment deadline and is above and beyond the separate requirements for the RFP and attainment demonstration.

The ceiling is therefore defined, up to the point of upturn, as motor vehicle emissions that would occur in the ozone season of that year, with VMT growth, if all measures for that area in that year were implemented as required by the Act. When this curve begins to turn up due to growth in VMT or vehicle trips, the ceiling becomes a fixed value. The ceiling would include the effects of Federal measures such as new motor vehicle standards, Phase II Reid Vapor Pressure (RVP) controls, and reformulated gasoline, as well as Act mandated SIP requirements such as enhanced inspection and maintenance, the clean-fuel vehicle fleet program, and the employee commute options (ECO) program. The ceiling would also include the effect of forecasted growth in VMT and vehicle trips in the absence of new discretionary measures to reduce them. Any VMT reduction measures or other actions to reduce motor vehicle emissions adopted since November 15, 1990 that are not specifically required for the area by another provision of the Act would not be included in the calculation of the ceiling.

If projected motor vehicle emissions for the ozone season in 1 year are not higher than the projected motor vehicle emissions during the previous year's ozone season, given the control measures in the SIP, the VMT offset requirement is satisfied.