State of Utah

Department of Environmental Quality

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DAQ-063-07

MEMORANDUM

TO: Air Quality Board

THROUGH: Cheryl Heying, Executive Secretary

FROM: Mat Carlile, Environmental Planning Consultant

DATE: September 5, 2007

SUBJECT: Public Hearings and Submission of State Implementation Plans (SIPs).

EPA Proposal

EPA recently finalized rule revisions to Section 40 CFR 51.102, *Public Hearings*; Section 40 CFR 51.103, *Submission of Plans, Preliminary Review of Plans*; and Appendix V of Part 51, *Criteria for Determining the Completeness of Plan Submissions*. These revisions modified the public hearing requirements for SIPs and the number of hard copies of the SIP we are required to submit to the regional office (see attachment 1 for a mark-up of these revisions). Below you will find a summary of these revisions as they went into effect on August 15, 2007:

Public Hearings (Section 40 CFR 51.102).

Previously states were required to hold public hearings on all SIP revisions, no matter how minor or controversial (see Section 40 CFR 51.102(a)). EPA revised this section to provide states some flexibility in the public hearing process. States must either hold a public hearing or provide the public with the opportunity to request a public hearing. The following are some examples of how we can meet the new public hearing requirement:

- For SIP revisions that we believe will draw interest from the public (I.E. the Ozone Maintenance Plan), we will hold a public hearing. The hearing logistics will be listed in the public notification. This option would not change the way we currently address SIP revisions.

- For SIP revisions that we are not sure will draw public interest, we could pre-schedule a

public hearing to be held 35 days from the initial public notice. The public notice would provide the hearing logistics, and include the following caveat: *If no request for a public hearing is received by (enter date 30 days from notice) the hearing will be cancelled. After (enter date 30 days from notice) you may go to http://www.airquality.utah.gov/Public-Interest/Public-Commen-Hearings/Pubrule.htm or call 801-536-4136 to determine if the public hearing has been cancelled.* If a hearing is not requested we would post a cancellation notice on the 31st day on the above website

- For SIP revisions that we believe will not elicit public interest, we could publish a 30-day notice informing the public of revisions to the SIP and require that any request for a public hearing must be submitted within 30-days. If a hearing is requested we would publish a new notice providing 30-day notice with the hearing logistics.

Submission of Plans, Preliminary Review of Plans (Section 40 CFR 51.103)

Section 40 CFR 51.103(a) and (b) required states to submit five copies of the plan to the appropriate regional office. EPA revised these sections to allow regions and states flexibility to determine the number of printed and electronic copies that are needed for an official plan submission. The revision establishes a minimum requirement of two hard copies with an electronic version that is exact duplicate of the hard copy.

Criteria for Determining the Completeness of Plan Submissions (Appendix V of Part 51)

EPA also revised the completeness criteria to conform to the above revisions.

51.102 Public hearings.

(a) Except as otherwise provided in paragraph (c) of this section, [~~conduct one or more public hearings on the following prior to adoption and submission to EPA of~~] and within the 30 day notification period as required by paragraph (d) of this section, States must provide notice, provide the opportunity to submit written comments and allow the public the opportunity to request a public hearing. The State must hold a public hearing or provide the public the opportunity to request a public hearing. The notice announcing the 30 day notification period must include the date, place and time of the public hearing. If the State provides the public the opportunity to request a public hearing and a request is received the State must hold the scheduled hearing or schedule a public hearing (as required by paragraph (d) of this section). The State may cancel the public hearing through a method it identifies if no request for a public hearing is received during the 30 day notification period and the original notice announcing the 30 day notification period clearly states: *If no request for a public hearing is received the hearing will be cancelled; identifies the method and time for announcing that the hearing has been cancelled; and provides a contact phone number for the public to call to find out if the hearing has been cancelled.* These requirements apply for adoption and submission to EPA of:

(1) Any plan or revision of it required by §51.104(a).

(2) Any individual compliance schedule under (§51.260)

(3) Any revision under §51.104(d).

(b) Separate hearings may be held for plans to implement primary and secondary standards.

(c) No hearing will be required for any change to an increment of progress in an approved individual compliance schedule unless such change is likely to cause the source to be unable to comply with the final compliance date in the schedule. The requirements of §§51.104 and 51.105 will be applicable to such schedules, however.

(d) Any hearing required by paragraph (a) of this section will be held only after reasonable notice, which will be considered to include, at least 30 days prior to the date of such hearing(s):

(1) Notice given to the public by prominent advertisement in the area affected announcing the date(s), time(s), and place(s) of such hearing(s);

(2) Availability of each proposed plan or revision for public inspection in at least one location in each region to which it will apply, and the availability of each compliance schedule for public inspection in at least one location in the region in which the affected source is located;

(3) Notification to the Administrator (through the appropriate Regional Office);

(4) Notification to each local air pollution control agency which will be significantly impacted by such plan, schedule or revision;

(5) In the case of an interstate region, notification to any other States included, in whole or in part, in the regions which are significantly impacted by such plan or schedule or revision.

(e) The State must prepare and retain, for inspection by the Administrator upon request, a record of each hearing. The record must contain, as a minimum, a list of witnesses together with the text of each presentation.

(f) The State must submit with the plan, revision, or schedule, a certification that the [~~hearing required by~~]requirements in paragraph (a) and (d) of this section [~~was held in accordance with the notice required by paragraph (d) of this section~~]were met. Such certification will include the date and place of any public hearing(s) held or that no public hearing was requested during the 30 day notification period.

51.103 Submission of plans, preliminary review of plans.

a) The State makes an official plan submission to EPA only when the submission conforms to the requirements of appendix V to this part, and the State delivers five copies or at least two hard copies with an electronic version of the hard copy (unless otherwise agreed to by the State and Regional Office) of the plan to the appropriate Regional Office, with a letter giving notice of such action. If the State submits an electronic copy, it must be an exact duplicate of the hard copy.

(b) Upon request of a State, the Administrator will provide preliminary review of a plan or portion thereof submitted in advance of the date such plan is due. Such requests must be made in writing to the appropriate Regional Office [~~and must be accompanied by five copies of the materials to be reviewed~~], must indicate changes (such as, redline/strikethrough) to the existing approved plan, where applicable and must be accompanied by five hard copies or at least two hard copies with an electronic version of the hard copy (unless otherwise agreed to by the State and Regional Office). Requests for preliminary review do not relieve a State of the responsibility of adopting and submitting plans in accordance with prescribed due dates.

Appendix V of Part 51—Criteria for Determining the Completeness of Plan Submissions

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2.1. Administrative Materials

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(d) A copy of the actual regulation, or document submitted for approval and incorporation by reference into the plan, including indication of the changes made (*such as, redline/strikethrough*) to the existing approved plan, where applicable. The submittal shall be a copy of the official State regulation /document signed, stamped, dated by the appropriate State official indicating that it is fully enforceable by the State. The effective date of the regulation/document shall, whenever possible, be indicated in the document itself. If the State submits an electronic copy, it must be an exact duplicate of the hard copy with changes indicated, signed documents need to be in portable document format, rules need to be in text format and files need to be submitted in manageable amounts

(e.g., a file for each section or chapter, depending on size, and separate files for each distinct document) unless otherwise agreed to by the State and Regional Office.

...

(g) Certification that public hearings(s) were held in accordance with the information provided in the public notice and the State's laws and constitution, if applicable and consistent with the public hearing requirements in 40 CFR 51.102.