



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

January 28, 2013

Mr. Curtis Spalding
Regional Administrator
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: Certification of Adequacy for 2010 Nitrogen Dioxide Standard

Dear Administrator Spalding:

As Governor Hassan's designee, I am enclosing for your review and approval New Hampshire's certification of adequacy for the 2010 one-hour National Ambient Air Quality Standard (NAAQS) for nitrogen dioxide (NO₂), and one exact electronic copy thereof on a disk (enclosed).

Under paragraphs 110(a)(1) and (2) of the Clean Air Act (Act), after promulgation of a new or revised NAAQS, each state is required to submit a plan to provide for the implementation, maintenance, and enforcement of the NAAQS. States are required to address basic state implementation plan (SIP) requirements, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. By statute, SIPs required by paragraphs 110(a)(1) and (2) are to be submitted by states within 3 years after promulgation of a new or revised standard. EPA advises that these subsection 110(a) "infrastructure" SIPs are due 3 years from the date of signature of the NAAQS, as this represents widespread dissemination and, therefore, promulgation of the NAAQS under 307(d) of the Act. For the 2010 NO₂ standard, the due date was January 22, 2013.

New Hampshire's EPA-approved SIP, which is published in the Code of Federal Regulations at 40 CFR 52 Subpart EE, explicitly fulfills most of the requirements of paragraphs 110(a) (1) and (2). Other 110(a) (1) and (2) requirements are fulfilled in applicable chapters and parts from the New Hampshire statutes pertaining to the duties and powers of the Commissioner of the Department of Environmental Services (DES) and in applicable chapters and parts from the New Hampshire Rules Governing the Control of Air Pollution, NH Administrative Rules Env-A 100 *et seq.* Most of the laws cited in the certification of adequacy were contained in the original SIP that was submitted in January of 1972. Through the years, these statutes have been amended and recodified. The specific authorizations contained in both the former and current laws cited in this certification of adequacy, however, have remained the same. To avoid any confusion in the future, DES will submit the current, relevant sections of the state's Air Pollution Control Act, RSA 125-C, with a future SIP revision.

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There are fourteen elements within paragraphs 110(a) (1) and (2) that New Hampshire is required to meet in the certification of adequacy. The specific statutes and administrative rules of the New Hampshire program that address those elements are identified in the attached SIP revision.

If you have any questions, please contact me at (603) 271-6791 or Charlie Martone of my staff at (603) 271-1089.

Sincerely,



Craig A. Wright
Acting Director
Air Resources Division

Attachment

ec: Dave Conroy, EPA Region I
Ida McDonnell, EPA Region I
Donald Dahl, EPA Region I

EVIDENCE OF THE PLAN'S ADOPTION

40 CFR Part 51, Appendix V, 2.1(b)

EVIDENCE OF THE PLAN'S ADOPTION

The cover letter, signed by the Governor's designee, is evidence that the State of New Hampshire has adopted this Certification of Adequacy and revision to the State Implementation Plan (SIP). The only state requirement for SIP submittals is that at least 30 days before the date of any public hearing related to SIP revisions, public notice shall be published in a newspaper of general daily statewide circulation. (See Env-A 204.01) Then if a hearing is held, it must be conducted in accordance with Env-C 205. (See Env-A 204.02) See the Evidence of Public Notice and the Certification of Public Hearing for evidence of the plan's adoption in accordance with Env-A 204.

EVIDENCE OF LEGAL AUTHORITY

40 CFR Part 51, Appendix V, 2.1(c)

Laws of New Hampshire, RSA 125-C:6
Powers and Duties of the Commissioner

TITLE X
PUBLIC HEALTH

CHAPTER 125-C
AIR POLLUTION CONTROL

Section 125-C:6

125-C:6 Powers and Duties of the Commissioner. – In addition to the other powers and duties granted herein, the commissioner shall have and may exercise the following powers and duties:

I. Exercising general supervision of the administration and enforcement of this chapter and all rules adopted and orders promulgated under it;

II. Developing a comprehensive program and provide services for the study, prevention, and abatement of air pollution;

III. Conducting and encouraging studies relating to air quality;

IV. Collecting and disseminating the results of studies relating to air quality;

V. Advising, consulting, and cooperating with the cities and towns and other agencies of the state, federal government, interstate agencies, and other affected agencies or groups in matters relating to air quality;

VI. Encouraging local units to promote cooperation by the people, political subdivisions, industries, and others in preventing and controlling air pollution in the state;

VI-a. Encouraging the recycling of waste oil by allowing qualified marketers to sell, and qualified facilities to burn, a mixture that consists of at least 90 percent virgin no. 6 oil and the remainder complying with the used fuel oil specifications in 40 CFR, section 279.11, table 1;

VII. Entering at all reasonable times in or upon any private or public property, except private residences, for the purpose of inspecting or investigating any condition which is believed to be either an air pollution source or in violation of any of the rules or orders promulgated hereunder. Any information, other than emission data, relating to secret processes or methods of manufacture or production obtained in the course of such inspection or investigation shall not be disclosed by the commissioner without permission of the person whose source is inspected or investigated;

VIII. Accepting, receiving, and administering grants or other funds or gifts for the purpose of carrying out any of the functions of this chapter, including such monies given under any federal law to the state for air quality control activities, surveys, or programs;

IX. Consulting the air resources council established by RSA 21-O:11 on the policies and plans for the control and prevention of air pollution;

X. Exercising all incidental powers necessary to carry out the purposes of this chapter;

XI. Conducting emission tests and requiring owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the commissioner on the nature and amounts of emissions from such stationary sources. The commissioner shall have the authority to make such data available to the public and as correlated with any applicable emission standards;

XII. Carrying out a program of inspection and testing of all modes of transportation, to enforce compliance with applicable emission standards when necessary and practicable and to control or limit the operation of motor vehicular and other modes of transportation

when in the opinion of the commissioner such modes of transportation are producing or pose an imminent danger of producing levels of air pollutants that will result in a violation of an ambient air quality standard, or that will result in a significant deterioration, as defined in applicable federal regulations, of existing air quality in an area classified as a "clean air" area by state or federal regulations;

XIII. Coordinating and regulating the air pollution control programs of political subdivisions of the state and entering agreements with said subdivisions to plan or implement programs for the control and abatement of air pollution;

XIV. Establishing and operating a statewide system under which permits shall be required for the construction, installation, operation, or modification of air pollution devices and sources, which system shall be established pursuant to RSA 125-C:11 and the sections which follow. The authority vested in the commissioner by this section shall include the power to delay or prevent any construction, modification, or operation of said air pollution sources and modifications which, in the opinion of the commissioner, would cause the ambient air pollution level in the locality of such construction, modification, or operation to exceed limits for ambient concentrations established by the New Hampshire state implementation plan adopted pursuant to the Clean Air Act as amended, or which construction, modification, or operation would, in the opinion of the commissioner, violate any provision of any land use plan established by the New Hampshire state implementation plan;

XIV-a. Establishing fuel quality standards and testing requirements for biomass other than round wood and wood chips derived from round wood or waste wood such as limbs, branches, brush, slash, bark, stumps, sawdust, saw mill trimmings, clean pallets, and untreated wood scraps from furniture and other manufacture and eligible biomass fuel related to the combustion of such materials at stationary sources. The commissioner may establish such standards as necessary to maintain statewide compliance with Clean Air Act standards and RSA 125-I.

XV. Implementing a program of prevention of significant deterioration of ambient air quality by establishing air quality increments limiting the maximum allowable increases in the amounts of air pollutants provided such increments are not less stringent than those specified in the Clean Air Act and amendments thereto, and in regulations promulgated thereunder;

XVI. Establishing an air quality monitoring equipment replacement program to provide for sufficient annual replacement to meet federal Environmental Protection Agency guidelines and to assure the reliability and accuracy of the network equipment.

XVII. Implementing a program to control the emissions of air contaminants from consumer products for purposes of RSA 485:16-c, by establishing limits on the manufacture, use, or sale of such products, provided that such limits are not less stringent than those established under the Clean Air Act and amendments thereto, and in regulations promulgated under the Clean Air Act.

Source. 1979, 359:2. 1981, 332:3. 1986, 202:6, I(h), 8, 10. 1988, 277:1. 1995, 192:1. 1996, 228:104. 2001, 293:6, eff. July 17, 2001. 2008, 113:4, eff. Aug. 2, 2008. 2010, 183:8, eff. June 21, 2010.

COPY OF THE ACTUAL PLAN

40 CFR Part 51, Appendix V, 2.1(d)

Revision to the
New Hampshire
State Implementation Plan

Certification of State Implementation Plan Adequacy
Regarding Clean Air Act Section 110(a)(1) and (2)
for the 2010 1-Hour Nitrogen Dioxide NAAQS

January 28, 2013



Air Resources Division

Certification of State Implementation Plan Adequacy Regarding Clean Air Act Section 110(a)(1) and (2) for the 2010 1-Hour Nitrogen Dioxide NAAQS

Purpose

This document certifies to the U.S. Environmental Protection Agency (EPA) that New Hampshire's State Implementation Plan (SIP) fulfills the "infrastructure" requirements established in sections 110(a)(1) and (2) of the Clean Air Act (CAA) for nitrogen dioxide (NO₂).¹

Background

The CAA requires EPA to set National Ambient Air Quality Standards (NAAQS) for pollutants considered harmful to public health and the environment. National standards exist for six criteria pollutants: nitrogen dioxide, ozone, particulate matter, carbon monoxide, sulfur dioxide, and lead. For each of these pollutants, section 109 of the CAA requires EPA to set the health-based, or *primary*, standards at levels judged to be "requisite to protect the public health with an adequate margin of safety." The CAA also requires EPA to establish *secondary* standards that are "requisite" to protect public welfare from "any known or anticipated adverse effects associated with the pollutant in the ambient air," including effects on vegetation, soils, water, wildlife, buildings and national monuments, and visibility.

On January 22, 2010, EPA strengthened the primary NAAQS for nitrogen dioxide by promulgating a revised standard based on *1-hour average* concentrations. EPA set the new 1-hour NO₂ NAAQS at the level of 100 parts per billion (ppb). EPA also retained, with no change, the *annual average* NO₂ standard of 53 ppb. (See [75 FR 6474](#).) These changes did not affect the secondary NO₂ standard, which was revised under a separate rulemaking. (See [77 FR 20218](#).)

Section 107(d) of the CAA requires that, after receipt of recommendations from the states and within two years after promulgation of a NAAQS, EPA must designate all areas of the country as *attainment* (meeting the standard), *nonattainment* (not meeting the standard), or *unclassifiable* on the basis of available information. On January 20, 2012, EPA designated all of New Hampshire as unclassifiable/attainment for the 2010 1-hour NO₂ NAAQS. (See [77 FR 9532](#).)

Pursuant to section 110(a)(1) of the CAA, states are required to submit State Implementation Plans meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS. Section 110(a)(2) requires states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States are required to submit such SIPs for the 2010 1-hour NO₂ NAAQS to EPA by January 22, 2013.

New Hampshire's SIP Revision

The submittal of this document is intended to meet New Hampshire's obligations under the CAA with respect to section 110(a)(1) and (2) for the 2010 1-hour NO₂ primary National Ambient Air Quality Standards. The following describes in summary form how New Hampshire's SIP meets these requirements with specific reference to subsections 110(a)(2)(A) through (M).

¹ Nitrogen dioxide (NO₂) is one of a group of highly reactive gasses known as oxides of nitrogen, or nitrogen oxides (NO_x). Other members of this group include nitrous acid and nitric acid. While EPA's National Ambient Air Quality Standards cover all NO_x, nitrogen dioxide is the component of greatest interest and the indicator for the larger group of nitrogen oxides. NO₂ forms quickly from emissions from cars, trucks and buses, off-road equipment, power plants, and agricultural sources. NO₂ contributes to the formation of ground-level ozone and fine-particle pollution.

Summary Description of New Hampshire's Compliance with Clean Air Act Section 110(a)(1) and (2) SIP Requirements for NO₂

► Subsection 110(a)(2)(A): Emission Limits and Other Control Measures

CAA² Citation:

"Each such plan shall...include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions or emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act."

Applicable NH Laws and Regulations:

The following regulations have high relevance to, but are not inclusive of all regulations for, the control of NO₂ and NO_x:

- [Env-A 300: Ambient Air Quality Standards](#)³
 - Env-A 306.01: Primary and Secondary Ambient Air Quality Standards for Nitrogen Dioxide
 - Env-A 306.02: Determination of Attainment of NO₂ Standard
 - Env-A 306.03: Measurement for NO₂ Attainment Determination
- [Env-A 500: Standards Applicable to Certain New or Modified Facilities...](#)
 - Env-A 503: New Source Performance Standards
- [Env-A 600: Statewide Permit System](#)
 - Env-A 618: Nonattainment New Source Review
 - Env-A 619: Prevention of Significant Deterioration⁴
- [Env-A 700: Permit Fee System](#)
- [Env-A 1300: Nitrogen Oxides \(NO_x\) Reasonably Available Control Technology \(RACT\)](#)⁵
- [Env-A 2300: Mitigation of Regional Haze](#)
- [Env-A 3200: NO_x Budget Trading Program](#)
- [Saf-C 3200: Official Motor Vehicle Inspection Requirements](#)
 - Saf-C 3220: Emissions Requirements
 - Saf-C 3222: On-Board Diagnostic System⁶

² CAA refers to the Clean Air Act. CFR refers to the U.S. Code of Federal Regulations. EPA refers to the U.S. Environmental Protection Agency. NHDES refers to the New Hampshire Department of Environmental Services. RSA refers to the New Hampshire Revised Statutes Annotated. Env-A refers to the New Hampshire Code of Administrative Rules for the Control of Air Pollution. Env-Or and Env-Wm refer to the New Hampshire Code of Administrative Rules for the Oil & Remediation Program. Saf-C refers to the New Hampshire Code of Administrative Rules for the Department of Safety, Commissioner's Office.

³ NH amended Env-A 300: Ambient Air Quality Standards, effective September 1, 2012. NHDES submitted the amended rule as a SIP revision for EPA's approval on November 8, 2012.

⁴ NH amended Env-A 619: Prevention of Significant Deterioration, effective September 1, 2012. NHDES submitted the amended rule as a SIP revision for EPA's approval on November 15, 2012.

⁵ NH adopted Env-A 1300: Nitrogen Oxides (NO_x) Reasonably Available Control Technology (RACT), effective October 31, 2010, as a replacement for Env-A 1211: Nitrogen Oxides (NO_x). NHDES submitted this rule as a SIP revision for EPA's approval on March 31, 2011.

⁶ NH amended Saf-C 3222: On-Board Diagnostic System, effective June 22, 2007. NHDES submitted the amended rule as a SIP revision for EPA's approval on November 17, 2011.

► Subsection 110(a)(2)(B): Ambient Air Quality Monitoring/Data System

CAA Citation:

"Each such plan shall...provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator."

Applicable NH Laws and Regulations:

- RSA 125:81 Powers and Duties of the Agency (recodified as [RSA 125-C:6 Powers and Duties of the Commissioner](#))
 - RSA 125:81, IV (recodified as RSA 125-C:6, IV), authorizes the agency to collect and disseminate the results of studies relating to air quality.
 - RSA 125:81, V (recodified as RSA 125-C:6, V), authorizes the agency to consult and cooperate with agencies of the federal government.

Additional Information:

NHDES routinely collects and reports ambient air quality data for NO₂ and other pollutants in accordance with EPA-approved methods. These data are reviewed and validated before being sent to EPA's Air Quality System (AQS) no later than 90 days after the end of a calendar quarter. In accordance with [40 CFR 58](#), NHDES submitted a 2012 air quality monitoring network plan on July 20, 2012. EPA Region I approved this plan on August 29, 2012, with the exception of elements related to NCore, PAMS, and NO₂ monitoring, which require approval of the EPA Administrator.

The rulemaking that established the NO₂ NAAQS also established new ambient air monitoring and reporting requirements for NO₂, with new monitors to begin operating no later than January 1, 2013. (See [75 FR 6474](#).) Subsequently, on October 5, 2012, EPA issued a proposed rule to revise the deadlines for the near-road component of the NO₂ monitoring network and to implement a phased deployment approach. (See [77 FR 64244](#).) The revised schedule would make the near-road NO₂ network operational between January 1, 2014, and January 1, 2017, but would not change the total number of monitors already required nationally. In the same rulemaking, EPA also proposed to revise the approval authority for annual monitoring network plans for NO₂ monitoring.

► Subsection 110(a)(2)(C): Program for Enforcement of Control Measures

CAA Citation:

"Each such plan shall...include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D."

Applicable NH Laws and Regulations:

- RSA 125:90-93 (recodified as [RSA 125-C:11](#)), provide for a statewide permit program.
- RSA 125:82 (recodified as [RSA 125-C:15, I](#)) authorizes the agency to issue orders to correct violations.
- RSA 125:85 (recodified as RSA 125-C:15, II) authorizes the agency to obtain injunctive relief to prevent violations.
- RSA 125:86 (recodified as RSA 125-C:15, I-b) authorizes the agency to impose fines for violations of statutes and rules.

Additional Information:

The above-listed statutes provide legal authority for the enforcement of [Env-A 618: Nonattainment New Source Review](#) and [Env-A 619: Prevention of Significant Deterioration](#). Revisions to Env-A 619 (and [Env-A 100: Organizational Rules](#)) pertaining to the regulation of greenhouse gases were approved by EPA in a final rule published on February 6, 2012. (See [77 FR 5700](#).)

► Subsection 110(a)(2)(D): Interstate Transport**CAA Citation:**

"Each such plan shall...contain adequate provisions – (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will – (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement)."

Applicable NH Laws and Regulations:

- [Env-A 619: Prevention of Significant Deterioration](#) protects air quality in downwind NO₂ attainment areas.
- [Env-A 2300: Mitigation of Regional Haze](#) includes NO_x emission limits for certain fossil-fuel-fired steam generating units.

Additional Information:

As described in a recent memorandum⁷ to the states, EPA does not intend to make findings with respect to section 110(a)(2)(D)(i)(I) while the agency awaits resolution of legal matters related to the Cross-State Air Pollution Rule (CSAPR). Accordingly, New Hampshire will await further guidance from EPA before making a submission to address this SIP element. Note that New Hampshire has no pending obligations under sections 115 or 126.

► Subsection 110(a)(2)(E): Adequate Resources**CAA Citation:**

"Each such plan shall...provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or

⁷ EPA memorandum, Gina McCarthy to Regional Air Division Directors, "Next Steps for Pending Redesignation Requests and State Implementation Plan Actions Affected by the Recent Court Decision Vacating the 2011 Cross-State Air Pollution Rule," November 19, 2012.

instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision.”

Applicable NH Laws and Regulations:

- RSA 125:81 (recodified as [RSA 125-C:6](#)) authorizes the NHDES Commissioner to enforce the state’s air laws, establish a permit program, accept and administer grants, and exercise all incidental powers necessary to carry out the law.
- [RSA 21-O:11, I Statement of Purpose and Findings](#)⁸ establishes the NH Air Resources Council, a state board that has the authority to hear enforcement and permit appeals. The Council consists of 11 members, 6 of whom must represent the public interest. Those representing the public interest may not derive any significant portion of their income from persons subject to permits or enforcement orders, and may not serve as attorney for, act as consultant for, serve as officer or director of, or hold any other official or contractual relationship with any person subject to permits or enforcement orders.

Additional Information:

New Hampshire’s SIP, originally submitted on January 27, 1972, and subsequently revised, describes the (a) existing organizations, (b) manpower, (c) funding, (d) physical resources, and (e) local agencies as required under subsection 110(a)(2)(E). Note, however, that New Hampshire does not rely on any local or regional government, agency, or instrumentality for the implementation of any SIP provision.

► Subsection 110(a)(2)(F): Stationary Source Emissions Monitoring and Reporting

CAA Citation:

“Each such plan shall...require, as may be prescribed by the Administrator - (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection.”

Applicable NH Laws and Regulations:

- RSA 125:81, XI (recodified as [RSA 125-C:6](#), XI) authorizes the agency to require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the agency on the nature and amounts of emissions from such stationary sources. The agency shall have the authority to make such data available to the public and as correlated with any applicable emission standards.
- [Env-A 600: Statewide Permit System](#), paragraph 609.06(b)(8), requires a compliance assurance monitoring (CAM) plan, if required by [40 CFR 64](#).
- [Env-A 800: Testing and Monitoring Procedures](#) establishes minimum testing and monitoring procedures, calculation procedures, standards, and requirements in order to determine compliance with applicable state and federal statutes and rules. This chapter includes the

⁸ NHDES submitted this law as a SIP revision for EPA’s approval on December 31, 2012.

following relevant parts:

- Env-A 802: Compliance Stack Testing for Stationary Sources
 - Env-A 803: NOx RACT Testing Procedures
 - Env-A 808: Continuous Emission Monitoring
 - Env-A 809: Approval of Alternate Methods
 - Env-A 810: Air Pollution Control Equipment Monitoring Plan; Additional Testing and Monitoring
- [Env-A 900: Owner or Operator Recordkeeping and Reporting Obligations](#) establishes the requirement that records be kept at sources which discharge air pollutants so that the emissions of such pollutants may be readily calculated or estimated and reported to NHDES for the purposes of demonstrating compliance, compiling emission inventories, and developing air related strategic plans. This chapter includes the following relevant parts:
 - Env-A 902: Availability of Records (See note below.)
 - Env-A 903: General Recordkeeping Requirements
 - Env-A 905: NOx Emission Statements Recordkeeping Requirements
 - Env-A 906: Additional Recordkeeping Requirements
 - Env-A 907: General Reporting Requirements
 - Env-A 909: NOx Emission Statements Reporting Requirements
 - Env-A 910: Additional Reporting Requirements
 - Env-A 911: Recordkeeping and Reporting Requirements for Permit Deviations
 - Env-A 912: Alternative Time Periods

Note: Env-A 902.01(d) reads: “Subject to [Env-A 103](#), all data submitted to the division, including emission data and applicable emission limitations, shall be made available to the public.” Env-A 103 provides a mechanism by which a person who submits information to the director can protect confidential information, to the extent permitted under [RSA 125-C:6](#), VII, which establishes that emission data are not considered confidential information.

► Subsection 110(a)(2)(G): Emergency Power

CAA Citation:

"Each such plan shall...provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority."

Applicable NH Laws and Regulations:

- RSA 125:84 (recodified as [RSA 125-C:9](#)) states: “Whenever the director finds that an air pollution emergency exists requiring immediate action to protect the public health, welfare, or safety, he may with consent of the governor and council issue an order reciting the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith. The director shall rescind or abate such order as soon as the emergency ceases to exist.”

Additional Information:

The cited law grants NHDES broad statutory authority to address activities causing imminent and substantial endangerment to public health. Under extreme circumstances, emissions of NO₂ and other oxides of nitrogen (NOx) might present an imminent concern for public health because they are chemical precursors to ground-level ozone and presumed precursors to fine particle

formation. New Hampshire is classified as Priority I for ozone and Priority III for nitrogen dioxide and fine particulate matter. On this basis, an emergency episode plan is required for ozone, but none is required for NO₂ or PM_{2.5}. (See [40 CFR 51.150-51.153](#).)

More specifically, 40 CFR 51.152(c) exempts Priority III areas from the need to develop episode plans. A Priority III region for nitrogen dioxide is defined in 40 CFR 51.150 as any area in which ambient concentrations are no greater than 100 µg/m³ (0.06 ppm), annual arithmetic mean. The following table displays average NO₂ values for four monitoring sites in New Hampshire over the last decade. As the data show, annual NO₂ levels resided well below the threshold throughout this period.

Monitor Location	AQS Number	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Manchester	330110020	0.012	0.012	0.011	0.010	0.011	0.011	0.010	0.008	**	**
Peterborough*	330115001	**	**	**	0.001	0.001	0.001	0.001	0.001	**	**
Nashua*	330111011	**	0.003	0.002	0.002	0.003	0.003	**	0.001	0.002	0.002
Portsmouth	330150014	0.009	0.007	0.007	0.008	0.007	0.007	**	**	**	**

* Value is average NO₂ concentration for ozone season only. ** NO₂ was not monitored at this location in this year.

NHDES procedures in response to elevated ozone levels are discussed in the ozone infrastructure SIP submitted to EPA on December 31, 2012.

► Subsection 110(a)(2)(H): Future SIP revisions

CAA Citation:

"Each such plan shall...provide for revision of such plan – (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act."

Applicable NH Laws and Regulations:

- RSA 125:81 (recodified as [RSA 125-C:6](#)) provides as follows: "In addition to the other powers and duties granted herein, the agency shall have and may exercise the following powers and duties:...II. To develop a comprehensive program and provide services for the study, prevention and abatement of air pollution;..."
- [Env-A 204: Public Hearings on the State Implementation Plan](#) sets forth the procedure for SIP hearings.

Additional Information:

As evidence of New Hampshire's commitment to fulfilling the requirements of this subsection, it is noted that NHDES has made numerous SIP revisions in the past for the purpose of meeting the National Ambient Air Quality Standards. (See [EPA's Summaries and Rulemakings](#) for past documentation.)

► **Subsection 110(a)(2)(I): Areas Designated Nonattainment**

CAA Citation:

"Each such plan shall...in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas)."

Applicable NH Laws and Regulations: See below.

Additional Information:

In accordance with a recent memorandum, EPA does not expect infrastructure SIP submissions to address subsection 110(a)(2)(I); nonattainment area plans required under part D follow a different schedule from the section 110 infrastructure elements and are reviewed and acted upon through a separate process.⁹ Note that New Hampshire does not have areas designated as nonattainment for the NO₂ NAAQS.

► **Subsection 110(a)(2)(J): Consultation with Government Officials**

CAA Citation:

"Each such plan shall...meet the applicable requirements of section 121 (relating to consultation),..."

Applicable NH Laws and Regulations:

- RSA 125:81 (recodified as [RSA 125-C:6](#)) provides as follows: "In addition to the other powers and duties granted herein, the agency shall have and may exercise the following powers and duties:... V. To advise, consult, and cooperate with the cities and towns and other agencies of the state, federal government, interstate agencies, and other affected agencies or groups in matters relating to air pollution; VI. To encourage local units to promote cooperation by the people, political subdivisions, industries, and others in preventing and controlling air pollution in the state; XIII. The agency shall have the authority to coordinate and regulate the air pollution control programs of civil subdivisions of the state and to enter agreements with said subdivisions to plan or implement programs for the control and abatement of air pollution."
- [Env-A 600: Statewide Permit System](#)
 - Env-A 621: Permit Notice and Hearing Procedures: Temporary Permits and Permits to Operate specifies the public notice and hearing procedures that apply to all applications for the issuance of, amendment to, or denial of temporary permits and permits to operate.
 - Env-A 622: Permit Notice and Hearing Procedures: Title V Operating Permits specifies the public notice and hearing procedures that apply to all applications for the issuance, significant modification to or renewal of Title V operating permits files with the department and all requests for Title V operating permit re-openings.
- [Env-A 1500: Conformity](#) provides for consultation with local agencies and planning commissions with respect to transportation conformity and the conformity of federal actions related to transportation projects.

⁹ EPA Memorandum, Stephen D. Page to Regional Air Division Directors, "Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)," October 14, 2011.

► Subsection 110(a)(2)(J): Public Notification

CAA Citation:

"Each such plan shall...meet the applicable requirements of...section 127 (relating to public notification),..."

Applicable NH Laws and Regulations:

- RSA 125:81 (recodified as [RSA 125-C:6](#)) provides as follows: “In addition to the other powers and duties granted herein, the agency shall have and may exercise the following powers and duties:... IV. To collect and disseminate the results of studies relating to air pollution; V. To advise, consult, and cooperate with the cities and towns and other agencies of the state, federal government, interstate agencies, and other affected agencies or groups in matters relating to air pollution; VI. To encourage local units to promote cooperation by the people, political subdivisions, industries, and others in preventing and controlling air pollution in the state; . . .”

Additional Information:

NO₂ and other oxides of nitrogen (NO_x) are chemical precursors to ground-level ozone and presumed precursors to fine particle formation. On days when ambient ozone or PM_{2.5} concentrations are predicted to be high, NHDES exercises the authority granted under RSA 125:81 (recodified as [RSA 125-C:6](#)) to issue public alerts. NHDES makes press releases and posts website notices advising people on how to help prevent air pollution and minimize the worst health effects of poor air quality. NHDES is one of the state partners in EPA’s AIRNOW and Enviroflash Air Quality Alert programs. (See www.airnow.gov.)

► Subsection 110(a)(2)(J): PSD and Visibility Protection

CAA Citation:

"Each such plan shall...meet the applicable requirements of...part C (relating to prevention of significant deterioration of air quality and visibility protection);..."

Applicable NH Laws and Regulations:

- RSA 125:81, XIV (recodified as [RSA 125-C:6](#), XIV) authorizes the agency to establish and operate a statewide system under which permits shall be required for the construction and operation of new and modified stationary sources.
- [Env-A 619: Prevention of Significant Deterioration](#) addresses PSD and visibility protection and is essential to meeting the requirements of [40 CFR 51.166](#), [40 CFR 52.21](#) and [RSA 125-C](#).
- [Env-A 2300: Mitigation of Regional Haze](#) establishes specific emission limitations for certain emission sources for the purposes of compliance with the Regional Haze Rule. (See [64 FR 35714](#) and [40 CFR 51 subpart P](#).)

► Subsection 110(a)(2)(K): Air Quality Modeling/Data

CAA Citation:

"Each such plan shall...“provide for – (i) the performance of such air quality modeling as the

Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.”

Applicable NH Laws and Regulations:

- RSA 125:81 (recodified as [RSA 125-C:6](#)) authorizes the department to exercise general supervision of the administration and enforcement of the statute and all rules adopted and orders promulgated under it; to develop a comprehensive program and provide services for the study, prevention, and abatement of air pollution; to conduct and encourage studies relating to air quality; to collect and disseminate the results of studies relating to air quality; to advise, consult, and cooperate with the cities and towns and other agencies of the state, federal government, interstate agencies, and other affected agencies or groups in matters relating to air quality; and, among other authorities, to exercise all incidental powers necessary to carry out the purposes of the statute.
- [Env-A 600: Statewide Permit System](#)
 - Env-A 613.02: Denial of Permit Issuance authorizes NHDES to deny the issuance of a construction permit if modeling shows that a major source proposing to construct or make modifications in a nonattainment area will cause or contribute to a violation of the NAAQS for a pollutant for which that area is in attainment.
 - Env-A 619.03: PSD Program Requirements incorporates by reference numerous paragraphs of [40 CFR 52.21](#), including (k)(1), (l), and (m), which require modeling by major sources prior to construction or major modifications.

Additional Information:

NO₂ and other oxides of nitrogen (NO_x) are chemical precursors to ground-level ozone and presumed precursors to fine particle formation. In exercising the authority granted in RSA 125:81 (recodified as [RSA 125-C:6](#)), NHDES regularly performs trend analysis for ozone, NO₂, and PM_{2.5}, as well as predictive air quality modeling for ozone and PM_{2.5}. New Hampshire is a member of the Ozone Transport Commission and the Mid-Atlantic/Northeast Visibility Union (MANE-VU) and participates in the air quality modeling efforts conducted by these organizations.

► Subsection 110(a)(2)(L): Permitting Fees

CAA Citation:

"Each such plan shall...“require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover – (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.”

Applicable NH Laws and Regulations:

- [Env-A 700: Permit Fee System](#) establishes a fee system requiring the payment of fees to cover

the reasonable direct and indirect costs of: reviewing and acting upon applications for the issuance of, amendment to, modification to, renewal of, or any combination of the foregoing actions to a temporary permit, state permit to operate, or Title V operating permit; implementing and enforcing the terms and conditions of any temporary permit, state permit to operate, or Title V operating permit; administering the state permit program; and developing, implementing and administering the Title V operating permit program. In particular, Env-A 705 establishes the emission fee program for Title V and non-Title V sources.

Additional Information:

EPA's full approval of New Hampshire's title V program became effective on November 23, 2001. New Hampshire's title V program documentation included a demonstration that the state will collect fees from title V sources above the presumptive minimum in accordance with [40 CFR 70.9\(b\)\(2\)\(i\)](#).

► Subsection 110(a)(2)(M): Consultation/Participation by Affected Local Entities

CAA Citation:

"Each such plan shall...“provide for consultation and participation by local political subdivisions affected by the plan.”

Applicable NH Laws and Regulations:

- RSA 125:81 (recodified as [RSA 125-C:6](#)) provides as follows: “In addition to the other powers and duties granted herein, the agency shall have and may exercise the following powers and duties:... V. To advise, consult, and cooperate with the cities and towns and other agencies of the state, federal government, interstate agencies, and other affected agencies or groups in matters relating to air pollution; VI. To encourage local units to promote cooperation by the people, political subdivisions, industries, and others in preventing and controlling air pollution in the state; XIII. The agency shall have the authority to coordinate and regulate the air pollution control programs of civil subdivisions of the state and to enter agreements with said subdivisions to plan or implement programs for the control and abatement of air pollution;...”
- [Env-A 204: Public Hearings on the State Implementation Plan](#) sets forth the procedure for SIP hearings.

**EVIDENCE THAT NEW HAMPSHIRE FOLLOWED ALL
PROCEDURAL REQUIREMENTS**

40 CFR Part 51, Appendix V, 2.1(e)

EVIDENCE THAT NEW HAMPSHIRE FOLLOWED ALL PROCEDURAL REQUIREMENTS

The only state requirement for SIP submittals that do not involve rulemaking is that at least 30 days before the date of any public hearing related to SIP revisions, public notice shall be published in a newspaper of general daily statewide circulation. (See Env-A 204.01) Then if a hearing is held, it must be conducted in accordance with Env-C 205. (See Env-A 204.02) See the Evidence of Public Notice and the Certification of Public Hearing for evidence of the plan's adoption in accordance with Env-A 204.

EVIDENCE OF PUBLIC NOTICE

40 CFR Part 51, Appendix V, 2.1(f)

UNION LEADER CORPORATION

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NEW HAMPSHIRE
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AIR RESOURCES DIVISION

0000059625
STATE OF NH AIR RESOURCES COMM
VALERIE DAVID
PO BOX 95
CONCORD NH 03302-0095

I hereby certify that the legal notice: (0000362410) PUB HEARING 1/16/13 @ 11AM
was published in the New Hampshire Union Leader
printed at Manchester, NH by the Union Leader Corp.
On:
12/17/2012.

State of New Hampshire
Hillsborough County

Subscribed and sworn to before me this

17th day of Dec. 2012

Heidi A Gagnon

Notary Public



STATE OF NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENT

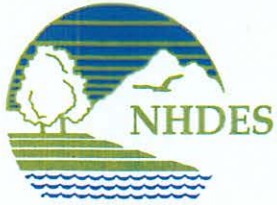
STATE OF NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES AIR RESOURCES DIVISION CONCORD, NEW HAMPSHIRE NOTICE OF PUBLIC COMMENT PERIOD AND PUBLIC HEARING In accordance with New Hampshire Administrative Rule Env-A 204.01(b) and Title 40 of the Code of Federal Regulations (CFR) Section 51.102, notice is hereby given that the New Hampshire Department of Environmental Services, Air Resources Division (the Department) has prepared, and intends to submit to the U.S. Environmental Protection Agency, a certification of the adequacy of New Hampshire's State Implementation Plan (SIP) to meet the requirements of the federal Clean Air Act, section 110 (a) (1) and (2), pertaining to infrastructure elements for implementation of the one-hour federal air quality standard for nitrogen dioxide. This standard, which New Hampshire and other states must meet, is contained in Title 40: Protection of Environment, section 50.11, National Primary and Secondary Air Quality Standards for Oxides of Nitrogen. This SIP revision is submitted in response to the revised National Ambient Air Quality Standard (NAAQS) for Oxides of Nitrogen as promulgated by EPA on January 22, 2010. Certification of SIP adequacy must be made within three years after the date of promulgation of the standards. The Department hereby solicits comments and has scheduled a public hearing on this SIP revision. Comments must be submitted in writing or by email or fax to Charles Martone, Air Resources Division, NH Department of Environmental Services, P.O. Box 95, Concord, NH 03302-0095; email Charles.Martone@des.nh.gov; fax (603)271-1381. A SIP public hearing at the Department offices has been scheduled for 11:00 a.m., Wednesday, January 16, 2013, in Room 110 at 29 Hazen Drive, Concord, NH 03301. All comments on the proposed SIP revision must be received by 4:00 p.m. on Wednesday, January 16, 2013, to be entered into the record. A copy of the SIP certification of adequacy is available for public inspection at the Department's offices at 29 Hazen Drive, Concord, NH, during regular working hours from 8:00 a.m. to 4:00 p.m., Monday through Friday. The main text of the SIP certification may be downloaded at <http://des.nh.gov/organization/divisions/air/do/sip/index.htm> under "Nitrogen Dioxide." For more information or to make arrangements for anyone wishing to attend the hearing who may need special assistance, please call Charles Martone at (603)271-1089. Craig A. Wright Acting Director, Air Resources Division NH Department of Environmental Services Dated: December 17, 2012

Appeared in: **The Union Leader** on Monday, 12/17/2012

[Back](#)

CERTIFICATION OF PUBLIC HEARING

40 CFR Part 51, Appendix V, 2.1(g)



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

**CERTIFICATION OF PUBLIC PROCESS:
Certification of State Implementation Plan Adequacy
Regarding Clean Air Act Section 110(a)(1) and (2)
for the 2010 1-Hour Nitrogen Dioxide NAAQS**

I hereby certify that:

In accordance with New Hampshire Administrative Rule Env-A 204.01(b) and Federal regulations at 40 CFR § 51.102, public notice was given that the New Hampshire Department of Environmental Services (the Department) intended to submit for the approval of the U.S. Environmental Protection Agency (EPA) a certification that New Hampshire's State Implementation Plan (SIP) fulfills the "infrastructure" requirements established in sections 110(a)(1) and (2) of the Clean Air Act (CAA) for nitrogen dioxide (NO₂).


A public hearing on the SIP submittal was held at 11:00 a.m., Wednesday, January 16, 2013, at the Department's offices in Room 110 at 29 Hazen Drive, Concord, NH 03301. Opportunity was provided for members of the public to submit oral comments during the hearing or written comments at any time up to 4:00 p.m. on the hearing date, for consideration by the Department in preparing the final SIP submittal.

A copy of the draft SIP submittal was available for public inspection at the Department's offices at 29 Hazen Drive, Concord, NH, during regular working hours from 8:00 a.m. to 4:00 p.m., Monday through Friday, throughout the comment period. The draft SIP revision was also available for downloading from the Department's website at <http://des.nh.gov>.

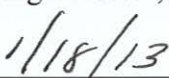
The notice was published in the *Union Leader*, a newspaper of general, statewide circulation, on Monday, December 17, 2012, 30 days prior to the date of the hearing.

Since no members of the public attended the hearing, presentation of the draft SIP revision and recordation of the presentation were determined to be unnecessary. Therefore, the hearing was closed at 11:10 a.m., and a memo stating the circumstances was added to the file.

The above statements are true to the best of my knowledge and belief.



Craig A. Wright
Acting Director, Air Resources Division



Date

**COMPILATION OF PUBLIC COMMENTS AND NEW HAMPSHIRE'S RESPONSE
THERE TO**

40 CFR Part 51, Appendix V, 2.1(h)

Compilation of Public Comments and New Hampshire's Response Thereto

Comments on the proposed SIP revision and certification of adequacy were received by NHDES from the U.S. Environmental Protection Agency (EPA) in a letter dated January 8, 2013. No other public comments were received. The following lists EPA's comments and NHDES's responses thereto.

Comment: "In light of ongoing litigation, we suggest New Hampshire address the 'significantly contribute to nonattainment or maintenance in another state' portion of element D(i), also sometimes referred to as prongs 1 and 2, at a later time. For the reasons explained in the November 19, 2012, EPA memorandum entitled 'Next Steps for Pending Redesignation Requests and State Implementation Actions Affected by the Recent Court Decision Vacating the 2011 Cross-State Air Pollution Rule,' at this time, EPA does not plan to make findings with respect to Clean Air Act (CAA) section 110(a)(2)(D)(I), prongs 1 and 2..."

Response: NHDES has revised this section of the document to note that it will await further guidance from EPA before making a submission to address this SIP element.

Comment: "For element G, we recommend that New Hampshire's discussion more explicitly address the emergency episode contingency planning requirements in 40 CFR 51.152. Specifically, we suggest New Hampshire discuss how current NO₂ levels in New Hampshire compare to the definition of Priority III area (in 40 CFR 51.150) and to 40 CFR 51.152(c), whereby Priority III areas do not need to develop episode plans."

Response: NHDES has revised the section on element G to read as follows:

"The cited law grants NHDES broad statutory authority to address activities causing imminent and substantial endangerment to public health. Under extreme circumstances, emissions of NO₂ and other oxides of nitrogen (NO_x) might present an imminent concern for public health because they are chemical precursors to ground-level ozone and presumed precursors to fine particle formation. New Hampshire is classified as Priority I for ozone and Priority III for nitrogen dioxide and fine particulate matter. On this basis, an emergency episode plan is required for ozone, but none is required for NO₂ or PM_{2.5}. (See [40 CFR 51.150-51.153](#).)

"More specifically, 40 CFR 51.152(c) exempts Priority III areas from the need to develop episode plans. A Priority III region for nitrogen dioxide is defined in 40 CFR 51.150 as any area in which ambient concentrations are no greater than 100 µg/m³ (0.06 ppm), annual arithmetic mean. The following table displays average NO₂ values for four monitoring sites in New Hampshire over the last decade. As the data show, annual NO₂ levels resided well below the threshold throughout this period.

Average Annual NO₂ Concentrations (ppm) in New Hampshire, 2003-2012											
<u>Monitor Location</u>	<u>AQS Number</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Manchester	330110020	0.012	0.012	0.011	0.010	0.011	0.011	0.010	0.008	**	**
Peterborough*	330115001	**	**	**	0.001	0.001	0.001	0.001	0.001	**	**
Nashua*	330111011	**	0.003	0.002	0.002	0.003	0.003	**	0.001	0.002	0.002
Portsmouth	330150014	0.009	0.007	0.007	0.008	0.007	0.007	**	**	**	**

* Value is average NO₂ concentration for ozone season only. ** NO₂ was not monitored at this location in this year.

"NHDES procedures in response to elevated ozone levels are discussed in the ozone infrastructure SIP submitted to EPA on December 31, 2012." *Comment:* "Under element E, recent discussions

between EPA and DES staff have revealed that there is a citation error on page 6. The final statute cited on page 6 should be RSA 21:O. In addition, the accompanying footnote should indicate that this statute was submitted to EPA as a SIP revision on December 31, 2012.”

Response: The corrected reference to RSA 21:O has been made in the text, and the submission of this statute as a SIP revision is now noted in footnote 8.

Comment: “Although New Hampshire references Env-A 800 and 900 for meeting CAA section 110(a)(2)(F), the state should consider also referencing the compliance assurance monitoring requirements contained in Env-A 609.06(b)(8) for meeting CAA section 110(a)(2)(F)(i).”

Response: NHDES agrees and has added Env-A 609.06(b)(8) as support for compliance with section 110(a)(2)(F)(i).