



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
999 18<sup>TH</sup> STREET - SUITE 500  
DENVER, CO 80202-2466

Ref: 8P-AR

Margie Perkins, Director  
Air Pollution Control Division  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

Dear Margie:

Pursuant to Section 93.118(e)(4) of the Transportation Conformity Rule (40 CFR Part 93, Subpart A), EPA has reviewed the Denver ozone maintenance plan submitted by Governor Roy Romer on August 8, 1996, in order to determine the adequacy of the emissions budgets for volatile organic compounds and nitrogen oxides contained in this plan for purposes of conformity. The conformity rule spells out limited technical and administrative criteria that we must use in determining adequacy of submitted emissions budgets, and we have determined that these criteria have not been satisfied for these emissions budgets. Therefore, we find that these budgets are inadequate for transportation conformity purposes. As a result of our inadequacy finding, the Denver Regional Council of Governments (DRCOG) and the U.S. Department of Transportation cannot use these budgets in future conformity analyses .

On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *Environmental Defense Fund vs. the Environmental Protection Agency*, No. 97-1637, that we must make an affirmative determination that the submitted motor vehicle emission budgets contained in State Implementation Plans are adequate before they are used to determine the conformity of Transportation Improvement Programs or Long Range Transportation Plans. In response to the court decision, we make any submitted SIP revision containing a control strategy plan available for public comment and respond to these comments before announcing our adequacy determination.

On August 8, 1996 Governor Roy Romer submitted the Denver ozone maintenance plan. This plan contained emissions budgets for volatile organic compounds and nitrogen oxides for 1993-2009, and for 2010 and beyond. When EPA performed adequacy determinations for other submitted Colorado SIPs in the spring of 1999, we did not review the Denver ozone maintenance plan, because the Air Quality Control Commission (AQCC) had voted to request the Governor to withdraw this plan. Subsequently, the AQCC rescinded its earlier action, necessitating an EPA adequacy determination on the submitted budgets pursuant to the court's decision. We announced receipt of the plan on the Internet and requested public comment by March 1, 2000. We received no comments on the plan during that comment period. As part of our review, we also reviewed comments submitted to the AQCC on the maintenance plan during the public hearing process. There were no comments submitted during the State hearing process regarding



the budgets.

We have determined that the emissions budgets in the maintenance plan are inadequate for two reasons. First, when the General Assembly approved this maintenance plan for submission to EPA, it assigned a sunset date to the plan of December 31, 2005 (C.R.S. 25-7-105(IV)). Because of this sunset date, the maintenance plan and its budgets expire as a matter of state law prior to the maintenance year. This is not consistent with the conformity rule, which requires that budgets be effective indefinitely, unless they are replaced by new budgets that have been found adequate by EPA (or approved by EPA, if they replace previously-approved budgets for the same year). The second reason is that DRCOG's population, employment and vehicle miles traveled (VMT) projections have changed significantly since the maintenance plan was developed. For example, in the recently-adopted carbon monoxide maintenance plan for Denver, the estimate of 2001 VMT was revised upward from 51,796,000 miles per day in the original CO SIP to 58,156,000 miles per day, a 12% increase. Because the budgets are based on demographic and VMT estimates that are now known to be inaccurate, EPA cannot find these budgets adequate.

As a result of this inadequacy determination, the applicable test for ozone conformity upon reinstatement of the ozone standard would be the "action less than baseline" or the "action less than 1990" test for VOCs. The NOx waiver granted by EPA on August 8, 1995 (60 FR 40286) would still be in effect, so no NOx texts would apply for ozone conformity.

We will announce this inadequacy determination in the Federal Register, but that notice will not constitute a new action or change the effect of this letter. This determination will become effective 15 days after the Federal Register announcement. If you have any questions, please contact me at (303) 312-6005, or Jeff Houk of my staff at (303) 312-6446.

Sincerely,

Richard R. Long, Director  
Air and Radiation Program

cc: Robin Smith, FHWA  
Dave Beckhouse, FTA  
David Pampu, DRCOG

