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(Chairperson)

Jack P. Broadbent  
EXECUTIVE OFFICER/APCO

*Requests Response*

*- Guardo, Nina*

October 28, 2009

Deborah Jordan, Ph.D.  
Director, Air Division  
United States Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

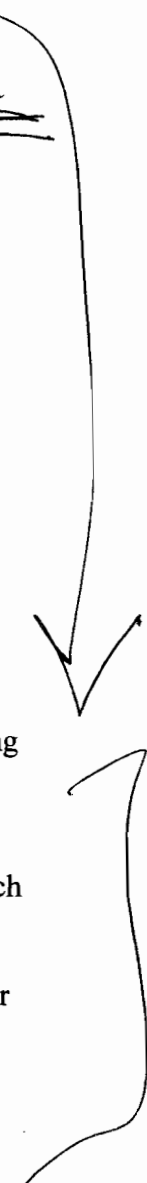
Re: Guidance on "Appendix S" Non-Attainment NSR Permitting for PM<sub>2.5</sub> Sources During PM<sub>2.5</sub> Transition Period

Dear Dr. Jordan:

I would like to thank you and your staff for meeting with me and my staff on September 10, 2009, to discuss how EPA's new PM<sub>2.5</sub> regulatory requirements will be implemented over the coming months and years. Obtaining EPA's input on PM<sub>2.5</sub> implementation issues is a very big help to me and my staff in addressing these important Clean Air Act requirements going forward, and we greatly appreciate it.

I would also like to request EPA's written concurrence with the proposed approach we discussed for the District to issue PM<sub>2.5</sub> permits that would satisfy the federal PM<sub>2.5</sub> Non-Attainment NSR permitting requirements under 40 C.F.R. Part 51, Appendix S ("Appendix S"), once the Bay Area is designated Non-Attainment for PM<sub>2.5</sub> (24-hour average). This approach would apply during the transition period between the time the Bay Area's Non-Attainment designation becomes effective and the time that the District adopts its own District-specific PM<sub>2.5</sub> permit requirements and has them approved by EPA into the California State Implementation Plan ("SIP").

The approach we discussed would involve the District including PM<sub>2.5</sub> permit conditions in the District Authorities to Construct ("ATCs") and Permits to Operate ("PTOs") that it issues under District Regulations 2-1 and 2-2. Although the District does not have provisions in those regulations that specifically address PM<sub>2.5</sub>, the District does have general authority under Regulation 2-1-403, "Permit Conditions", to impose any permit conditions reasonably necessary to ensure compliance with applicable District, California or federal requirements. The District could use this general authority to impose permit conditions that would ensure compliance with the PM<sub>2.5</sub> provisions of Appendix S in the District ATCs/PTOs for sources with PM<sub>2.5</sub> emissions that trigger Appendix S requirements. If appropriate PM<sub>2.5</sub> conditions were included to ensure compliance with those PM<sub>2.5</sub> requirements, then the District ATCs/PTOs could serve to satisfy the federal Appendix S PM<sub>2.5</sub> Non-Attainment NSR permit requirements for those



sources. Such sources could then use their District ATCs/PTOs, with the appropriate PM<sub>2.5</sub> conditions included, to demonstrate compliance with the Non-Attainment NSR requirements of Appendix S, and would not need to obtain a separate federal Non-Attainment NSR permit from EPA to satisfy their federal PM<sub>2.5</sub> obligations.

The District believes that this approach is authorized and appropriate under California law, given the provisions of District regulations cited above. Including appropriate PM<sub>2.5</sub> permit requirements necessary to satisfy the federal Appendix S requirements for PM<sub>2.5</sub> is clearly authorized under the plain language of District Regulation 2-1-403, and the District's NSR regulatory program of which Regulation 2-1-403 is a part is clearly authorized under California Health & Safety Code sections 42300 *et seq.* The District can therefore see no reason under California law why it would not be able to include such conditions in the District ATCs/PTOs if it will allow subject sources to use their District ATCs/PTOs to satisfy their federal Clean Air Act requirements.

The District requests EPA's concurrence that, as a matter of federal law, this approach would be effective and appropriate as a means for subject sources to satisfy their federal requirements for PM<sub>2.5</sub>. Although the District ATCs/PTOs are state-law permits issued under California law, not federal permits, the District believes that it was EPA's intention in its PM<sub>2.5</sub> Implementation Rule that state-law permits issued under states' existing SIP-approved Non-Attainment NSR permitting programs that include appropriate PM<sub>2.5</sub> requirements would satisfy the federal Appendix S requirements. (*See* 73 Fed. Reg. 28321, 28342 (May 16, 2008) (“[W]e believe that the majority of states have the legal authority to issue permits consistent with these [Appendix S] requirements under an existing SIP-approved permitting program.”).) Moreover, District Regulation 2-1-403 is included in the Bay Area's current SIP-approved Non-Attainment NSR regulations (*see* 64 Fed. Reg. 3850 (January 26, 1999) (approving District NSR regulations, including 2-1-403)), so the authority under which the District would impose these conditions is SIP-approved, even though the District has not yet had a chance to finalize specific PM<sub>2.5</sub> requirements for SIP approval. The District therefore believes that the District's state-law permits issued under District Regulation 2-1 and 2-2 could be effective to satisfy a source's federal Appendix S requirements, as long as such permits include appropriate PM<sub>2.5</sub> conditions to ensure compliance with Appendix S's PM<sub>2.5</sub> provisions.

The District would greatly appreciate EPA's concurrence with the effectiveness of this proposed approach to allow subject sources to use their District ATCs/PTOs to satisfy their federal Appendix S Non-Attainment NSR permitting requirements during the PM<sub>2.5</sub> transition period. In the alternative, should EPA disagree that this would be an appropriate and legally effective approach to handling Non-Attainment NSR permitting for PM<sub>2.5</sub> during the transition period, the District would appreciate hearing EPA's disagreement and concerns. The District would appreciate EPA's response at EPA's earliest convenience so that the District can begin planning for processing and issuing ATCs/PTOs with appropriate PM<sub>2.5</sub> provisions once the Bay Area's PM<sub>2.5</sub> (24-hour) Non-Attainment designation becomes effective.

Thank you for your consideration of these important PM<sub>2.5</sub> permitting issues, and thank you again for meeting with us on September 10<sup>th</sup>.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack P. Broadbent". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jack P. Broadbent  
Executive Officer/APCO

cc: Brian Bunger, Esq.  
Nancy Marvel, Esq.