

* SJV One Hour Ozone Plan *

Non-attainment fee and related issues

July 9, 2009

The info below is from the forwarded email originally from Dave Warner to LA County Sanitation District. I received this from California Council for Environmental and Economic Balance (CCEEB). LA Sanitation is very involved in negotiations on South Coast Air Quality Management District's Rule 317 - Federal Ozone Non-attainment Fees, and they had been talking to Dave Warner about Rule 3170, thus his communication with them. Please make this available to CAGI and other interested parties, as you deem appropriate.

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Dave Warner's email excerpt:

"Also attached you will find a fact sheet that EPA released to Valley stakeholders (July 8) on their actions relative to our one-hour ozone plan. The following are the pertinent details of their proposed NPR - these are not necessarily the FINAL comments, though, so we still need to look for the final *¹FR version in about two week.

What are the rule deficiencies?

The following provisions conflict with section 185 of the Act and prevent full approval of the SIP revision:

Section 4.2 exempts units that begin operation after the attainment year.

CAA Section 185 does not provide for such an exemption, so this exemption does not fully comply with the CAA.

Section 4.3 exempts any "clean emission unit" from the requirements of the rule. Section 3.6 defines a clean emission unit as a unit that is equipped with an emissions control technology that either has a minimum 95% control efficiency (or 85% for lean-burn internal combustion engines), or meets the requirements for achieved-in-practice Best Achievable Control Technology as accepted by the APCO during the 5 years immediately prior to the end of the attainment year. The District's staff report for Rule 3170 states that the exemption is intended to address "the difficulty of reducing emissions from units with recently installed BACT."

Although EPA understands the District's intended purpose for including the exemption, the exemption does not comply with CAA section 185.

Section 3.2.1 defines the baseline period as two consecutive years consisting of the attainment year and the year immediately prior to the attainment year. CAA Section 185(b)(2) provides the option for calculating baseline emissions over a period of more than one calendar year if a source's emissions are irregular, cyclical, or otherwise vary significantly from year to year. Since

¹ Reference Full Document: <http://www.epa.gov/region09/air/sjvalley/pdf/SJV-1hr-NPR-63009-signed.pdf>

Section 3.2.2 allows an alternative baseline, then Section 3.2.1 should describe the normal baseline calculation which should be based only on the attainment year emissions.

Section 3.2.2 allows averaging over 2-5 years to establish baseline emissions. CAA Section 185(b)(2) states that EPA may issue guidance authorizing such an alternative method of calculating baseline emissions if a source's emissions are irregular, cyclical, or otherwise vary significantly from year to year. EPA issued guidance on alternative methods for calculating baseline emissions in the form of the memorandum from William Harnett, mentioned above.

The averaging period allowed in Section

3.2.2 of Rule 3170 appears consistent with the March 21, 2008, guidance.

However, the language in Section 3.2.2 allows such averaging "if those years are determined by the APCO as more representative of normal source operation." This language is considered less stringent than the CAA criteria. The rule should be amended to specify use of the expanded averaging period only if a source's emissions are irregular, cyclical, or otherwise vary significantly from year to year.

Proposed action and public comment.

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the SJVUAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

However, the limited approval of Rule 3170 does not override specific CAA mandates. If the area fails to attain by its 2010 attainment date, fees will accrue beginning in 2011 for emissions above 80% of source baselines for clean units and new units which are exempted from fee collection under the State rule. The State must adopt and submit a rule to collect fees for 2011 and future years from those units or, consistent with the Administrator's obligation under §185(d), EPA will collect those fees. In addition, all sources are liable for fees calculated in accordance with the baseline definition in §185(b)(2) and EPA guidance issued pursuant to that provision.

The State must adopt and submit a rule that ensures fees are collected for 2011 and all future applicable years based on the statutory baseline requirement. If the State fails to do so, EPA will collect any additional fees owed pursuant to a federal program under §185(d).

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days."

Fact Sheet
EPA Proposed Action on San Joaquin Valley
1-hour Ozone Plan and Associated Rules
June 30, 2009

Proposed Action on SJV 1-hour Ozone Plan

- EPA is proposing to approve the majority of the San Joaquin Valley's (SJV) plan for meeting the 1-hour ozone standard by its Clean Air Act deadline of November 2010. We are proposing to disapprove the plan's contingency provisions. These proposals are based on an extensive review of the plan and the local and State air pollution control measures supporting the plan.
- This is the second time EPA is proposing action on SJV's plan for meeting the 1-hour ozone standard. After reviewing comments made by the public on our initial proposal last October, EPA determined that we needed to further evaluate the plan and rules associated with it and to provide the public with an additional opportunity to comment.
- The Clean Air Act (CAA) requires that air quality plans include contingency measures that provide for continuing emission reductions should an area fail to attain by its required deadline. EPA is proposing to disapprove the contingency provisions in the SJV plan because the plan does not show sufficient emission reductions for contingency purposes.
- This plan also lays the foundation for eventual attainment of the more protective 8-hour ozone standard in the Valley, while not specifically addressing that standard. EPA will take action on 8-hour ozone plans in the future.

Proposed Action on Rules Associated with the SJV 1-hour Ozone Plan

- In addition to the proposed action on the SJV 1-hour ozone plan, EPA is proposing action on rules in concert with the plan, as follows.

1. Rules on which EPA, in separate rulemakings, is proposing approval or has recently proposed approval include the following:

- ARB diesel and gasoline fuels rule revisions,
- ARB consumer products rule revisions,
- SJV Rule 4103 Open Burning,
- SJV Rule 4603 Surface Coating of Metal Parts and Products,
- SJV Rule 4604 Can and Coil Coating Operations,
- SJV Rule 4606 Wood Products and Flat Wood Paneling Products Coating Operations,
- SJV Rule 4607 Graphic Arts and Paper, Film, Foil and Fabric Coatings,
- SJV Rule 4612 Motor Vehicle and Mobile Equipment Coating Operations – Phase II,

- SJV Rule 4621 Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants,
- SJV Rule 4622 Gasoline Transfer Into Motor Vehicle Fuel Tanks,
- SJV Rule 4624 Transfer of Organic Liquid,
- SJV Rule 4651 Soil Decontamination Operations,
- SJV Rule 4653 Adhesives,
- SJV Rule 4662 Organic Solvent Degreasing Operations,
- SJV Rule 4663 Organic Solvent Cleaning, Storage, and Disposal, and
- SJV Rule 4703 Stationary Gas Turbines.

2. Rules on which EPA, in separate rulemakings, is proposing limited approval/disapproval include the following:

- SJV Rule 3170 Federally Mandated Ozone Nonattainment Fee,
- SJV Rule 4401 Steam-Enhanced Crude Oil Production Wells,
- SJV Rule 4570 Confined Animal Facilities,
- SJV Rule 4605 Aerospace Assembly and Component Manufacturing Operations, and
- SJV Rule 4684 Polyester Resin Operations.

Discussion of EPA Proposed Action on Selected Rules

1. Proposed Limited Approval/Disapproval of SJV Rule 4570 Confined Animal Facilities.

- EPA is proposing limited approval of the SJV rule to reduce volatile organic compound (VOC) emissions from confined animal facilities (CAFs). The SJV CAF rule is the first rule in the nation written specifically to control VOCs from CAFs, and is projected to reduce approximately 18 tons per day of VOC emissions.
- EPA is simultaneously proposing limited disapproval of this rule because it does not cover all major poultry sources (i.e., sources with 400,000 – 650,000 chickens). It also does not adequately demonstrate that large poultry and swine operations implement all reasonably available control technology (RACT) requirements.
- While EPA recommends additional rule revisions regarding dairies, beef feedlot and other cattle operations, we are proposing to defer a decision on whether the rule meets RACT for those operations pending results from the National Air Emissions Monitoring Study (NAEMS).

- The CAFs subject to the rule include:

<u>Livestock Category</u>	<u>Rule Applicability Limit</u>	<u># of Facilities Subject to Rule</u>
Dairy	1,000 lactating cows	550
Beef Feedlot	3,500 beef cattle	12
Other Cattle	7,500 cattle	-
Chickens	650,000 head	32
Turkeys	100,000 head	35
Swine	3,000 head	1

- The rule allows selection from a menu of mitigation measures for controlling VOCs specific to each animal sector.
- NAEMS is a \$14.8 million industry funded analysis of animal feeding operation (AFO) emissions at 25 sites nationwide that EPA is overseeing. Monitoring began in July 2007 and data collection and analyses should be completed by May 2010. EPA expects to release emission estimating methodologies by November 2011. Once methodologies are developed, EPA will determine whether appropriate national standards for AFOs should be developed.

2. Proposed Limited Approval/Limited Disapproval of SJV Rule 3170 Federally Mandated Ozone Nonattainment Fee

- EPA is proposing a limited approval of SJV Rule 3170, which establishes fees for large industrial and commercial air pollution sources if the area fails to meet the 1-hour ozone standard by 2010.
- EPA is simultaneously proposing a limited disapproval of this rule because it deviates from CAA requirements in a few respects. For example, it exempts from fees emission units that recently installed pollution controls and emission units constructed after 2010. While we appreciate the rationale for such exemptions, further rule modifications are needed before EPA can approve them.

3. Proposed Action on Updated Air Resources Board (ARB) Fuels and Smog Check Rules.

- EPA is proposing to approve California's current rules for gasoline and diesel fuel. California gasoline reduces vehicle emissions below federal standards and most recently was revised to allow increased amounts of ethanol as a fuel additive without increasing emissions. The California diesel fuel program is similar to the federal program except that it applies to nonroad vehicles sooner than the federal requirements.
- EPA soon expects to propose action on the latest version of California's Smog Check rule. The state operates an enhanced Smog Check program in the most polluted areas of the state and a basic program throughout most of the rest of the state. Nearly 25

million passenger vehicles are subject to the state's Smog Check program every two years.

Next Steps

- We are asking for the public to comment on the various proposals. Comments will be taken for 30 days after each proposal is published in the Federal Register.
- EPA expects to finalize action on the plan by November 13, 2009, consistent with a consent decree. EPA also expects to finalize action on the rules by that date.
- If finalized, the disapprovals of portions of the plan and rules will start a sanctions and FIP clock; however, EPA plans to continue to work with the State, SJV Air District and stakeholders to revise the plan and rules and avoid the sanctions and FIP.