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December 22, 2006

The Honorable Alan J. Steinberg
Regional Administrator
United States Environmental Protection Agency
Region 2
290 Broadway- 26th Floor
New York, New York 10007-1866

Dear Regional Administrator Steinberg:

This letter is in response to the United States Environmental Protection Agency's (USEPA) April 25, 2005 finding¹ that all 50 states failed to submit State Implementation Plans (SIPs) to satisfy the requirements of Section 110(a)(2)(D)(i) of the Clean Air Act, commonly referred to as the transport SIP requirement. Specifically, this Section of the Clean Air Act requires that states submit a SIP that contains adequate provisions prohibiting any source, or other type of emissions activity, within the State from emitting any air pollutants in amounts that will:

- 1) Contribute significantly to nonattainment of the National Ambient Air Quality Standard (NAAQS) for areas in another state or interfere with the maintenance of the NAAQS by any other state;
- 2) Interfere with measures required to meet the implementation plan for any other state related to Prevention of Significant Deterioration (PSD); and,
- 3) Interfere with measures required to meet the implementation plan for any other state related to Regional Haze and Visibility.

On August 11, 2006, the USEPA issued guidance² on what states should submit in order to comply with Section 110(a)(2)(D)(i) of the Clean Air Act. The remainder of this letter outlines how New Jersey plans to address this guidance. New Jersey believes that addressing transported emissions, both to and from the State, is critical for its multistate nonattainment areas to attain and maintain the health-based ambient air quality standards. To that end, it is vital that,

¹ 70 Fed. Reg., 21147-21151 (April 25, 2005)

² "Guidance for State Plan Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards", August 11, 2006.

in addition to the state and regional efforts currently underway, the USEPA continue to take action where states are preempted from action. Specifically, New Jersey urges the USEPA to focus its efforts to address emissions from onroad mobile sources, small offroad engines, ships and locomotives in a timely fashion.

Significant Contribution to Nonattainment, or Interference with Maintenance, of the NAAQS in Another State:

The USEPA's guidance document addresses the first two requirements of Section 110(a)(2)(D)(i) differently, depending on whether or not the state in question falls under the purview of the federal Clean Air Interstate Rule (CAIR). For those states, like New Jersey, that are subject to the requirements of the federal CAIR, the USEPA guidance indicates that submittal of a CAIR SIP, or reliance on the CAIR FIP, would satisfy the requirements of Section 110(a)(2)(D)(i). New Jersey does not concur with this guidance.

New Jersey is currently working to propose an abbreviated CAIR SIP that will comply with the federal CAIR requirements. This proposal is expected by the end of 2006. Based on the USEPA's guidance, this action by New Jersey would satisfy the requirements of the Section 110(a)(2)(D)(i). However, despite the USEPA's assurances to the contrary, New Jersey continues to be concerned that the implementation of CAIR alone will not be sufficient to address interstate transport issues, especially in the Northeastern and Mid-Atlantic United States. In fact, according to the 2010 CAIR modeling, between 26 and 82 percent (depending on the county in question) of New Jersey's 8-hour ozone is attributed to transported emissions. In addition to our concerns that CAIR is not stringent enough, nor implemented on a quick enough timeframe, to adequately meet attainment needs and provide timely protection of public health and welfare, its focus is solely on Electric Generating Units (EGUs). As such, CAIR does not address interstate transport of emissions from the other sectors (e.g., non-EGU, mobile, area).

In light of these concerns, New Jersey intends to implement additional strategies to address the transport of ozone precursors emissions both to and from the State. As part of a regional effort, New Jersey intends to:

- Continue to meet its obligations under the NO_x SIP call, while working to implement the federal CAIR program, and develop a program of additional emission reductions for EGUs,
- Update its Reasonably Available Control Technology (RACT) rules to address both the 8-hour ozone and PM_{2.5} precursors,
- Review the USEPA's revised and new CTGs, as they are released, and update state regulations where New Jersey has affected sources,
- Continue to implement the Low Emission Vehicle (LEV) requirements,
- Develop rules and/or other measures to address emissions on High Electrical Demand Days (HEDD)
- Propose additional requirements for consumer product formulations and portable fuel containers, and
- Reduce the allowable sulfur content in heating oil.

Many of New Jersey's existing requirements are already more stringent than the existing pollution control requirements in neighboring [re: upwind] states. We encourage our neighboring states to at least match our existing requirements, and we commit to consider any additional measures, beyond those already in place, implemented by our neighboring states, if more stringent than our current actions. We also continue to work with our neighboring states, both within and near the Ozone Transport Region, to develop more stringent regional measures to improve air quality throughout the OTR and beyond.

All actions which New Jersey determines are necessary to attain and maintain the NAAQS in New Jersey, and to attain and maintain the NAAQS in neighboring states, will be proposed and included as part of New Jersey's SIPs, and taken through public process at that time.

The PSD and Nonattainment New Source Review (NNSR) Requirement:

The USEPA's guidance requires states to confirm that:

- 1) Major sources currently subject to PSD and NNSR permitting programs also apply to the 8-hour ozone standard and that SIP-approved states are on track to meet the June 15, 2007 deadline for SIP submissions required by the Phase II ozone implementation rule.
- 2) Major sources are subject to PSD and NNSR permitting programs implemented in accordance with the USEPA's interim guidance calling for use of PM_{10} as a surrogate for $PM_{2.5}$ in the PSD and NNSR programs.

The entire State of New Jersey was previously in nonattainment for the 1-hour ozone NAAQS, and as such New Jersey already has a NNSR permitting program addressing the ozone precursors (VOC and NO_x). Since the entire State continues to be in nonattainment for the 8-hour ozone NAAQS, the existing ozone NNSR program remains in effect and applies to the 8-hour ozone NAAQS standard for major stationary sources. The State is on track to meet its June 15, 2007 obligations to submit a final attainment demonstration for the 8-hour ozone NAAQS by that date. Changes to New Jersey's NNSR rules are not necessary for ozone.

On December 29, 2005, the New Jersey Department of Environmental Protection (NJDEP) submitted an equivalency determination documenting that the current New Jersey NNSR program is more stringent than the Federal program, including lower applicability levels and higher offset rates than the federal rules. These more stringent requirements are part of New Jersey's effort to reduce transported air pollution.

With respect to the $PM_{2.5}$ standard, New Jersey has both attainment and nonattainment areas throughout the State, necessitating both a PSD and NNSR program with respect to this pollutant. To date, the USEPA has yet to finalize its implementation rule for the $PM_{2.5}$ NAAQS.

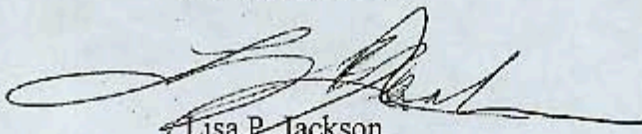
In the interim, New Jersey is complying with the USEPA's interim guidance³ by using PM₁₀ as a surrogate for PM_{2.5} in its existing NNSR program. Where PM₁₀ emission increases would be significant in a PM_{2.5} nonattainment area, New Jersey applies its NNSR rule. The NJDEP plans to revise its NNSR program and adopt a PSD program, including specific reference to PM_{2.5}, once the USEPA finalizes its implementation rule for the PM_{2.5} NAAQS, court remanded monitoring and recordkeeping requirements are adopted by the USEPA, and other judicial action is complete on several key areas of challenge. These rules will be subject to public comment, once proposed.

The Visibility Requirement:

The USEPA's guidance relieves the State of its Section 110(a)(2)(D)(i) requirement regarding visibility until such time as that state submits its Regional Haze SIP, due to the USEPA in December of 2007. We agree that our Regional Haze SIP will assess whether there is any interference with measures required to be included in the applicable implementation plan for any other State to prevent significant deterioration of air quality or to protect visibility. As with all of New Jersey's SIP proposals, a public comment period on the Regional Haze SIP, including the Section 110(a)(2)(D) requirement portion, will allow interested parties to provide input on the actions presented in the proposal.

If you have any questions regarding New Jersey's intended actions for addressing its Section 110(a)(2)(D)(i) obligations, please contact William O'Sullivan, Director of the Division of Air Quality, at (609) 984-1484.

Sincerely yours,



Lisa P. Jackson
Commissioner

C: Ray Werner, USEPA Region II
Rick Ruvo, USEPA Region II
Howard Geduldig, NJDOL

³ Memorandum entitled "Implementation of New Source Review Requirements in PM-2.5 Nonattainment Areas" from Stephen D. Page, Director to the Addressees, undated. See <http://www.epa.gov/NSR/guidance.html> for details.