California Environmental Protection Agency

Air Resources Board • Department of Pesticide Regulation • Department of Toxic Substances Control • Integrated Waste Management Board
Office of Environmental Health Hazard Assessment • State Water Resources Control Board • Regional Water Quality Control Boards

Pete Wilson
Governor

James M. Strock
Secretary for Environmental Protection

November 12, 1993

Ms. Carol Browner, Administrator
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Ms. Browner:

The California Air Resources Board and the California business community represented by the undersigned trade associations urge you to carefully review the rules concerning the control of hazardous air pollutants you are developing pursuant to the requirements of section 112 of the federal Clean Air Act. We are concerned that the rules will present an unnecessary burden on sources in states that already have an existing and effective hazardous air pollutant control program. Therefore, we urge you to carefully review the provisions of each rule to ensure that they are necessary to achieve the objectives of the federal Clean Air Act and that each rule provides flexibility to the states to implement them consistent with the infrastructure of their existing and effective hazardous air pollutant control program.

In particular, the prescriptive nature of many of the proposed rules may make it extremely difficult for states to obtain federal approval of their programs under the proposed rule implementing section 112(l) of the federal Clean Air Act (see 58 Federal Register 29396; May 19, 1993). Under the proposed rule, even those states having very effective hazardous air pollutant regulatory schemes will find it difficult to have their programs approved because the proposed rule lacks sufficient flexibility for them to demonstrate the adequacy of their programs.

According to the federal Clean Air Act, the essential requirement for a state to obtain approval of its existing hazardous air pollutant control program is to demonstrate that its provisions are no less stringent than the federal program. Unfortunately, several of the criteria chosen by your agency for making this demonstration pose an almost insurmountable burden for those states which take a different approach to reducing the emissions of hazardous air pollutants than the federal technology-based standards.

In California, we use a technology-based approach, taking into account risk and cost, which includes the requirement for installing the best available control technology on significant sources of hazardous air pollutants. This approach provides regulated sources the flexibility to implement controls in a cost-effective manner while minimizing public health risks from the facility. Unfortunately, this approach also may result in

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emission reduction techniques, compliance provisions, and recordkeeping requirements that differ from those required by your agency.

For example, a state must commit to the following requirements to obtain approval for a state program to substitute for emission standards developed pursuant to section 112(d):

> "Require levels of control for each source and emission point no less stringent than those contained in the otherwise applicable Federal standards or requirements." [section 63.94(b)(2)(ii)(B)]

> "Express levels of control and compliance and enforcement measures in the same form and units of measure as the otherwise applicable Federal standard or requirement." [section 63.94(b)(2)(ii)(D)]

As numerous commentators on the proposed rule pointed out, these requirements unnecessarily limit the ability of states to effectively implement programs which are clearly more protective of public health compared to the federal technology-based standards approach.

We believe the proposed rule should be revised to allow states greater flexibility in obtaining delegation for their hazardous air pollutant control programs without the need to demonstrate equivalence on a rule-by-rule or emission point-by-emission point basis. To this end, we recommend incorporating the following principles into a method states can use to seek EPA approval for their programs:

- Provide states with flexibility in demonstrating that their programs are consistent with the goals and requirements of section 112.

- Give states the flexibility to devise methods to make demonstrations of equivalent stringency on a facility-by-facility basis if they choose not to seek program approval.

- Provide the Environmental Protection Agency (EPA) regional offices with the authority to make final decisions on approval of state programs since the regional offices are most familiar with the content of specific state programs.

- Once a state program is approved, develop a federal auditing program to ensure that the state continues to implement and enforce rules which are at least as stringent as the federal program.

This approach is consistent with one of the recommendations made by Vice-President Gore in his National Performance Review. The Vice-President suggested the Environmental Protection Agency could improve environmental protection through increased flexibility for local government. One method suggested was to allow alternative approaches to meet environmental

mandates. Rules developed pursuant to section 112 and section 112(l) in particular provide an excellent opportunity to begin implementing this recommendation. Therefore, we encourage you to carefully consider these rules in light of our comments prior to promulgation.

Sincerely,

James M. Strock
Secretary for Environmental Protection

Allan Zaremberg, Senior Vice President
California Chamber of Commerce

Jananne Sharpless
Chairwoman
Air Resources Board

Victor Weisser, President
California Council for Environmental and Economic Balance

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California Manufacturers Associations

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cc: Felicia Marcus, EPA Region IX