



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



STEVEN E. CHESTER
DIRECTOR

April 12, 2004

Mr. Bharat Mathur, Acting Regional
Administrator
USEPA Region 5
77 West Jackson Boulevard (R-19J)
Chicago, Illinois 60604-3507

Dear Mr. Mathur:

The Michigan Department of Environmental Quality (MDEQ) has questions regarding the New Source Review (NSR) requirements for Michigan's soon-to-be-designated 8-hour ozone nonattainment areas. Over the last several months, the MDEQ's Air Quality Division (AQD) has sought clarification on a number of implementation issues concerning NSR requirements specific to Michigan. Some of the questions were answered in a February 26, 2004, letter from Mr. Stephen Rothblatt, U.S. Environmental Protection Agency (EPA), to Ms. Janet McCabe, Indiana Department of Environmental Management. However, the following questions remain, and the MDEQ must have a nonattainment NSR process in place upon the effective date of the 8-hour ozone nonattainment designations.

Therefore, listed below are the outstanding questions for which we seek your response, as well as our interpretation of the appropriate responses and thus our plan to address the issues.

1. *When will the classifications be final?*

Because no other time frame has been provided, the MDEQ presumes that the EPA still plans to finalize Phase I of its implementation rule, designate nonattainment areas, and classify the nonattainment areas by April 15, 2004. The EPA has also stated that the designations and classifications will be effective in late May. At that time, the MDEQ will begin implementing Michigan's Air Pollution Control R 336.1220 (Rule 220) for permit applications subject to nonattainment NSR. The MDEQ will revisit this position if the EPA fails to designate and classify the nonattainment areas by April 15, 2004.

2. *If the classifications do not occur simultaneously with the designations, a nonattainment area's classification potentially can change. Michigan potentially has areas that could have marginal or moderate classifications with different offset requirements. The EPA has indicated that some areas may be classified as moderate, but may be considered for marginal classification with a "5% bump-down" if it is appropriate. Marginal and moderate classifications have different offset requirements for a permit applicant. Given the uncertainty created by this scenario, how do we establish offset requirements for permit applications in designated nonattainment areas that have not yet been classified or the classification may change?*

The MDEQ will not issue nonattainment NSR permits until the nonattainment designations and classifications become effective. In the meantime, the MDEQ staff will counsel permit applicants in disputed counties to ensure that the applicants are aware of the potential affect of the dispute upon their permit's offset requirements. If the MDEQ completes the review of

an NSR permit application before a nonattainment area has been classified, then the MDEQ will issue the permit with offsets necessary to satisfy the requirements for unclassified nonattainment areas. The MDEQ assumes this will meet any interim requirements in the absence of specific EPA guidance.

3. *In its February 26, 2004, letter to the Indiana Department of Environmental Management, the EPA stated that it is "in the process of considering whether to update [40 C.F.R. Part 51] Appendix S (Appendix S) or adopt a separate rule to address preconstruction permitting during the SIP development period." Appendix S was promulgated in 1979 and has not been updated since that time. What is the EPA's time frame for completing this process and drafting new rules?*

Phase I of the EPA's implementation rule will not offer any guidance for applying NSR in the new nonattainment areas, yet sources located in nonattainment areas will be subject to NSR as soon as the designations are effective. To address this dilemma, the MDEQ plans to implement Rule 220 during the transitional period before promulgation of Phase II of the EPA's implementation rule, which will address NSR.

4. *What offset ratios will the EPA require for sources following Appendix S? Rule 220 contains ratios that follow those in Section 182 of the Clean Air Act and are more specific than the federal offset provisions in Appendix S.*

Rule 220 requires an offset ratio of 110 percent for volatile organic compounds (VOCs) in marginal and unclassifiable ozone nonattainment areas. Rule 220 also requires offset ratios of 115 percent for VOCs and nitrogen oxides (NOx) in moderate ozone nonattainment areas. Rule 220 is silent on offsets of NOx in moderate [post script: should have read "marginal," not "moderate"] nonattainment areas. Rule 220 was written to meet the old 1-hour ozone nonattainment EPA implementation requirements. The EPA has not promulgated implementation requirements that would require offsets in marginal areas. Based on conversations with EPA, it is our understanding that the EPA will require NOx offsets in marginal areas. The MDEQ will implement offset ratios for classified areas for both VOCs and NOx at the level that is presently in Rule 220 for VOCs. The MDEQ will require these offsets in the absence of EPA guidance.

5. *Does the EPA consider Rule 220 to be as stringent as Appendix S, or will the EPA expect the MDEQ to follow Appendix S?*

The MDEQ considers Rule 220 to be at least as stringent as the existing Appendix S. Rule 220 was previously approved by the EPA as part of Michigan's NSR State Implementation Plan (SIP). This approval occurred at a time when the existing version of Appendix S was already effective. The EPA could not have approved Rule 220 into Michigan's SIP if the EPA did not consider it at least as stringent as Appendix S.

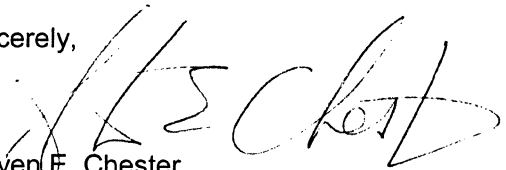
6. *What measures will the EPA take to address the problems created by not including NSR Implementation in Phase I of their implementation rule? EPA has indicated that the NSR implementation requirements will be in Phase II, but they are uncertain as to the promulgation date. The EPA has stated that the Phase II will probably be promulgated **after** the effective date of the designations. When will Phase II of the implementation rule be available? Since it appears it will not be possible to update Appendix S by the effective nonattainment designation date, will the EPA issue any interim guidance for the application of NSR in nonattainment areas before Phase II of the implementation rule becomes effective?*

The MDEQ seeks a specific response to this issue.

The implementation of NSR requirements in the ozone nonattainment areas in Michigan will begin in a matter of weeks. Unless and until we receive written responses from you, the MDEQ will implement these interpretations as part of our process for nonattainment NSR applications on and after the effective date of the designations. We seek your input on these issues as soon as possible.

Thank you for your attention to this matter.

Sincerely,


Steven E. Chester
Director
517-373-7917

cc: Mr. Jeffrey R. Holmstead, EPA Headquarters
Mr. Stephen Rothblatt, EPA Region 5
Mr. G. Vinson Hellwig, MDEQ