DEPARTMENT OF ENVIRONMENTAL QUALITY
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Ursula Kramer
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August 12, 2011

Ms. Deborah Jordan
Air Division Director
U.S. Environmental Protection Agency
Region IX, AIR-1
75 Hawthorne Street
San Francisco, CA 94105

RE: Pima County State Implementation Plan

Dear Ms. Jordan:

On June 23, 2011, the Pima County Air Quality Control District (AQCD) received a Notice of Intent to Sue (NIS) from the Rosemont Copper Company. The notice alleges that the Control Officer has violated an emission standard or limitation under the Clean Air Act. Specifically, Rosemont alleges that failure to either grant or deny a permit within 30 days of receipt of a complete application violates Pima County State Implementation Plan (SIP) Rule 213.C Public Notification/Public Comments. Since the SIP is a federally enforceable document, Pima County AQCD requests EPA's input and direction regarding several issues raised as a result of the NIS.

The SIP contains several provisions that are not consistent with the current Pima County Code. Pima County AQCD is well aware of this gap and has been working with EPA to address this issue. However, due to constraints in Arizona law, Pima County AQCD cannot address several SIP issues until the Arizona Department of Environmental Quality completes changes to its New Source Review (NSR) Program. Until the State has completed its work revising NSR in Arizona, the Pima County AQCD cannot proceed with changes to previously submitted SIP revisions which will remain pending.

In 1991, EPA issued "Revised Guidance on Enforcement during Pending SIP Revisions" to address nation wide issue regarding SIP. With respect to all of the provisions of the approved Pima County SIP as well as issues raised by the NIS, Pima County AQCD requests EPA's position regarding enforcement of the Pima County SIP.

The source specific issues related to the Rosemont permit application are as follows:

1. The Rosemont Copper Company's Class II Air Quality Permit Application and additional submittals classifies the source as a synthetic minor with respect to particulate matter. The total point source PM_{10} emissions are calculated at 66 tons per year. Consistent with Title V rules, this calculation does not include fugitive emissions, such as those from the proposed dry stack tailings pile.

   Pima County SIP Rule 171 defines a major source as a source that has the potential to emit more than 100 tons per year of a "common air pollutant". The definition states that:

   "For purposes of applying this definition, fugitive emissions as well as stack emissions shall be included in the calculating or estimating potential emissions."

   SIP Rule 601 defines "common air pollutants" to include Total Suspended Particulate Matter (TSP). While the Rosemont Copper Company did not provide TSP emissions, the total emissions of PM_{10}, including PM_{10} fugitive emissions, is 908 tons per year. Since PM_{10} is a component of TSP, the Rosemont Copper Company's application demonstrates that the source would be a major source pursuant to SIP Rule 171. If Pima County's approved SIP is applicable to this permit application for the Rule 213.C requirements as stated by Rosemont, would Rosemont also need to be treated as a major source in accordance with SIP Rule 601?

2. Pima County SIP Rule 504 Pre-Installation Testing and Modeling requires that any major source model compliance with all ambient air quality standards. If Rosemont is classified as major source, must the application contain modeling to demonstrate such compliance prior to the issuance of any air quality permit? Can EPA determine that there is other more suitable modeling guidance than what is identified in the SIP Rule 504 that should be used in the analysis?

3. Pima County SIP Rule 231 Non-compliance states:

   "The control officer shall deny an application for a permit if the applicant cannot prove to the satisfaction of the control officer, on the basis of information presented by the applicant and other available data, that the planned source is designed, controlled, equipped, or capable of being operated or conducted such that compliance with all applicable provisions of these rules and regulations would be possible throughout the term of the permit"

In order to determine if the proposed Rosemont Copper Company's Class II Air Quality Permit Application should be issued or denied pursuant to SIP Rule 213.C.1 and SIP Rule 231.A, must the applicant demonstrate compliance with SIP Rule 504 Pre-Installation Testing and Modeling Requirements to demonstrate compliance with SIP Regulation 341 Ambient Air Quality Standards which include mass concentration ceilings and the visibility limiting standards to fugitive air polluting activities and stack emissions?

4. If the Pima County AQCD failed to deny a permit application that does not prove to demonstrate compliance with applicable regulations of the Pima County SIP, including Regulation 34 Ambient Air Standards, would such failure to deny a permit be subject to provisions of Clean Air Act Section 304 Citizen Suits?

Pima County AQCD looks to your response on these issues. If you have any questions or would like to discuss this matter, please contact me at 520-243-73331.

Sincerely,

Ursula Kramer

Ursula Kramer, P.E., Director
Pima County DEQ

UK/RG/vlb

cc: C. H. Huckelberry, County Administrator
John Bernal, Deputy County Administrator