



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF  
AIR AND RADIATION

FEB 25 2005

Mr. E. Donald Elliot  
Willkie, Farr & Gallagher  
1875 K Street, N.W.  
Washington, D.C 20006-1238

Re: Response to Request for Correction Concerning EPA's Approval of SIP Revisions to Include State Regulations to Reduce VOCs from Architectural and Maintenance Coatings (RFC # 04020).

Dear Mr. Elliot:

This letter is in response to your Request For Correction (RFC) dated June 2, 2004, under EPA's "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency" (Guidelines).

You indicated that, in connection with ongoing EPA rulemaking actions that pertain to ozone State Implementation Plan (SIP) revisions in the states of Pennsylvania, New York, and Maryland, each state will file or has filed with EPA a request for emission reduction credits that will be based upon a report dated March 31, 2001, prepared by E.H. Pechan & Associates entitled "Control Measure Development Support Analysis of Ozone Transport Commission Model Rules" (Pechan Report). You indicated that the Pechan Report was commissioned by the Ozone Transport Commission (OTC) in connection with the OTC's development of various model rules, including a rule that would achieve reductions of emissions of volatile organic compounds (VOCs) from architectural and industrial maintenance (AIM) coatings. You asserted that the Pechan Report does not meet the Guidelines and that EPA's approval of the SIP revision and granting of credits to the states for the state AIM rules would therefore be based upon data that are in error.

A number of states have submitted new state AIM regulations to EPA for approval into each state's respective ozone SIP. EPA has approved state AIM rules for Delaware, Pennsylvania, and New York, and has proposed approval of new AIM rules for Maryland,

Virginia, and the District of Columbia.<sup>1</sup> Each of these submissions ask EPA to approve the state AIM regulations into the respective SIPs of those jurisdictions, but none request specific amounts of VOC emission reduction credits.

EPA assesses state regulations submitted for inclusion in the SIP under the applicable provisions of the Clean Air Act (CAA). Under section 110(a) of the CAA and relevant caselaw, states have significant leeway in selecting which sources of emissions to regulate and by what method to regulate them. Under section 116 of the CAA, states may adopt more stringent emission standards than those required under federal regulations. Similarly, under section 183(e), states may issue their own regulations governing VOC emissions from consumer products, including those otherwise subject to the federal AIM regulations. As you have noted, the VOC content limits of the state AIM regulations are “considerably more stringent” in each product category than those of the federal AIM regulations. In consequence, the basis for EPA’s actions approving these AIM regulations into each state’s SIP would be that they are “strengthening” measures, due to their more stringent VOC content limits.

Under these circumstances, the Agency’s actions to propose approval or to take final action to approve these state AIM regulations do not constitute a dissemination of the Pechan Report under the Guidelines. In taking these actions, EPA is not relying on the VOC emission reduction calculations of the Pechan Report, and by approving these state AIM regulations, EPA is neither adopting nor endorsing the data or conclusions in the Pechan Report. EPA is merely following its obligations under the CAA to approve state SIP submissions that meet the criteria of the statute.

The specific amount of VOC emission reduction credits attributable to each state AIM regulation is not before the Agency for approval in these actions. We will make that determination only after the states submit calculations of the credit that they conclude is attributable to each rule for a given nonattainment area, based upon their own state-specific facts and circumstances, and the states formally request EPA approval for a specific amount of VOC emission reduction credit. We will carefully review those submissions to insure that the credit calculations rely on data that are appropriate for this use.

In the event that a state ultimately elects to use the Pechan Report to support its request for VOC emission reduction credits from its state AIM regulation, we will bear in mind the objections that you have raised concerning that document. You will have an opportunity to comment in any future EPA rulemaking to approve or disapprove an amount of VOC emission reduction credit for a state’s AIM regulation based upon the Pechan Report. In fact, the first such opportunity has already arisen. In EPA’s recent proposed approval of SIP revisions pertaining to the Metropolitan Washington, D.C. severe ozone nonattainment area, Maryland, Virginia, and the District of Columbia seek credit for the VOC emissions achieved by their

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<sup>1</sup> See, 67 FR 70,315 (Nov. 22, 2002)(Delaware); 69 FR 68,080 (Nov. 23, 2004)(Pennsylvania); 69 FR 72,118 (Dec. 13, 2004)(New York); 69 FR 29674 (May 25, 2004)(Maryland); 69 FR 31,780 (June 7, 2004)(Virginia); and 69 FR 77,149 (Dec. 27, 2004)(District of Columbia).

respective AIM regulations.<sup>2</sup> EPA will be evaluating these requests for VOC credit in light of any comments that we receive on that issue. We welcome your input on this important issue in that action.

If you are dissatisfied with this response, you may submit a Request for Reconsideration (RFR). EPA recommends that this request be submitted within 90 days of the date of this letter. To do so, send a written request to the EPA Information Quality Guidelines Processing Staff via mail (Information Quality Guidelines Processing Staff, Mail Code 2811R, U.S. EPA, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460), electronic mail ([quality@epa.gov](mailto:quality@epa.gov)), or fax (202-565-2441). The RFR should reference the request number assigned to the original request for correction (RFC #04020). Additional information that should be included in the request is listed on the EPA Information Quality Guidelines Website ([www.epa.gov/quality/informationguidelines](http://www.epa.gov/quality/informationguidelines)).

Thank you for your interest in this important matter. If you have further concerns on this topic, please contact David LaRoche, a member of my staff, at (202) 564-3926.

Sincerely,



Robert D. Brenner  
Principal Deputy Assistant Administrator

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<sup>2</sup> See, 70 FR 2,085 (Jan. 12, 2005).