UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

December 4, 2006

Robert D. Barham, Assistant Chief
Stationary Source Division
California Air Resources Board
P.O. Box 2815
Sacramento, California 95812

Dear Mr. Barham:

I am writing in response to your letter dated November 28, 2006, requesting clarification on concurrence issues related to the State of California's Hexavalent Chromium Airborne Toxic Control Measure for Chrome Plating and Chromic Acid Anodizing Operations (ATCM). The United States Environmental Protection Agency, Region IX Office (U.S. EPA) has reviewed the proposed amendments to ATCM section 93102.14 that you sent with your letter, a copy of which is enclosed. In harmony with the Code of Federal Regulations, Title 40, section 63.91(g)(2), U.S. EPA cannot delegate to States the authority to approve alternatives to emissions standards. Therefore, we request that U.S. EPA remain listed as the concurring agency in Table 93102.14, for the category of limits and requirements. Additionally, for clarity, we recommend that the concurring agency for recordkeeping, retention of records, and reporting, be listed as "U.S. EPA for major changes." This letter is not conveying comments on any other portion of the draft proposed changes to the ATCM.

At this time, we would like to reaffirm our commitment to review and respond to requests for alternative requirements within 45 days as agreed to by the terms of the "Memorandum of Agreement (MOA) Between USEPA Region IX and the California Air Resources Board for Reviewing Alternative Requirements Pursuant to the California Chromium, Ethylene Oxide Sterilizer, and Perchloroethylene Dry Cleaning Air Toxics Control Measures," signed on June 19, 1998, by David P. Howekamp and Michael P. Kenny. A copy of the MOA is enclosed.

Thank you for including us in your rule amendment efforts. We look forward to working with you as you seek to further protect the public from exposure to hexavalent chromium emissions. If you have any questions, please contact Kingsley Adeduro at (415) 947-4182.

Sincerely,

Deborah Jordan
Director, Air Division

Enclosures
cc: Carla Takemoto, ARB
Janette Brooks, ARB
Robert Jenne, ARB

Linda S. Adams
Secretary for
Environmental Protection

Air Resources Board

Robert F. Sawyer, Ph.D., Chair
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Arnold Schwarzenegger
Governor

November 28, 2006

Ms. Debbie Jordan, Director
Air Division
U.S. EPA Region IX
75 Hawthorne Street
Mail Code: AIR-1
San Francisco, California 94105

Dear Ms. Jordan:

I am writing to ask for clarification as to when the United States Environmental Protection Agency (U.S. EPA) would need to concur on approvals for alternative requirements in the State of California's Hexavalent Chromium Airborne Toxic Control Measure for Chrome Plating and Chromic Acid Anodizing Operations (ATCM).

As you may know, we are in the process of proposing amendments to the ATCM to further protect the public from exposure to hexavalent chromium emissions. As part of the process we are asking you to evaluate the enclosed section 93102.14, *Procedure for Establishing Alternative Requirements*, of the ATCM and provide comments as to which approvals of alternative requirements the U.S. EPA would need to concur. As we understand from a conversation with your staff on November 21, 2006, U.S. EPA would delegate many of the authorities listed in Table 93102.14 to the air districts, except for alternatives which would be considered 'major changes' as defined in 40 Code of Federal Regulations part 63.90(a).

Based on this conversation, the enclosed section 93102.14 reflects our understanding of the approvals with which the U.S. EPA (and the Air Resources Board) would need to concur, and those approvals which would be delegated to the air districts. We are

proposing the amendments to the ATCM at the December 7, 2006, hearing. We would appreciate your comments as to whether the proposed revisions to section 93102.14 would comply with federal requirements prior to the hearing.

Thank you in advance for your timely response.

Sincerely,

Robert D. Barham, Assistant Chief
Stationary Source Division

Enclosure

cc: Mr. Stanley Tong, Environmental Engineer
Rulemaking Office, Air Division
U.S. EPA Region IX
75 Hawthorne Street
Mail Code: AIR-4
San Francisco, California 94105

Mr. Kingsley Adeduro, Environmental Engineer
Enforcement Office, Air Division
U.S. EPA Region IX
75 Hawthorne Street
Mail Code: AIR-5
San Francisco, California 94105

Ms. Mae Wang, Environmental Engineer
Rulemaking Office, Air Division
U.S. EPA Region IX
75 Hawthorne Street
Mail Code: AIR-4
San Francisco, California 94105

Ms. Janette Brooks, Chief
Air Quality Measures Branch
Air Resources Board

Section 93102.14 of the Hexavalent Chromium Airborne Toxic Control Measure (ATCM) for Chrome Plating and Chromic Acid Anodizing Operations

93102.14 ~~(k)~~ *Procedure for Establishing Alternative Requirements.*

(a)~~(1)~~ *Request Approval of an Alternative Requirement.* Any person may request approval of an alternative requirement. The person seeking such approval shall submit the proposed alternative requirement to the permitting agency for approval. The request must include the proposed alternative requirement, the reason for requesting the alternative requirement, and information demonstrating that the criteria for approval identified in Table 93102.14 ~~(k)(1) is~~ are met.

(b)~~(2)~~ *Approval of an Alternative Requirement.* A permitting agency may approve an alternative requirement if it determines that application of the alternative requirement meets the criteria for approval identified in Table 93102.14 ~~(k)(1)~~, and the permitting agency has received concurrence by the ~~ARB and~~ U.S. EPA where concurrence is required.

(c)~~(3)~~ *Concurrence for an Alternative Requirement.* For those requirements identified in Table 93102.14 ~~(k)(1)~~ as requiring concurrence by the U.S. EPA ~~and ARB~~, the permitting agency shall submit the alternative requirement to the concurring agency prior to final action by the permitting agency.

(d)~~(4)~~ *Reports of Approved Alternative Requirements to U.S. EPA.* The permitting agency shall provide the U.S. EPA ~~and ARB~~ with copies of all approved alternative requirements. The information shall be provided at a mutually agreed upon frequency.

(e)~~(5)~~ *Approval Criteria.* Nothing in this section prohibits the permitting agency from establishing approval criteria more stringent than that required in Table 93102.14 ~~(k)(1)~~.

(f)~~(6)~~ *Alternatives Approved by U.S. EPA.* Waivers obtained from U.S. EPA prior to ~~the effective date~~ [Effective Date] of this regulation shall remain in effect until the effective dates of the requirements in subsection 93102.4(b) become effective.

Table 93102.14 ~~(k)(1)~~ -- Requirements for Approval of Alternatives

Subsection	Requirement	Criteria for Approval	Approving Agency	Concurring Agency[4] [1]
~~(a)~~ 93102.1	~~a~~Applicability	equivalent type and size of facility ~~source~~ regulated	District	
~~(c)~~ 93102.4	~~Standards~~ Limits and requirements	equal or greater emission reductions	District	
~~(d)(1)~~ 93102.7(a)	~~p~~Performance test	equivalent means of determining compliance	District	
~~(d)(2)~~ 93102.7(b)	~~u~~Use of previously conducted ~~existing~~ performance ~~source~~ test	~~O~~overall existing tests provide a similar level of compliance assurance	District	
~~(d)(3)~~ 93102.7(c)	~~a~~Alternative test method	provides a similar level of accuracy and precision	District For Minor[2] and Intermediate[3] Changes	U. S. EPA for Major[4] Changes and ARB
~~(d)(4)~~ 93102.7(d)	~~a~~Amendments to the pre-test protocol	equivalent means of determining compliance	District	
~~(d)(5)~~ 93102.7(e)	~~t~~Test all emission points	equivalent means of determining compliance	District	
~~(e)~~ 93102.9	~~p~~Parameter monitoring	equivalent means of determining and assuring compliance	District For Minor[5] and Intermediate[6] Changes	U. S. EPA for Major[7] Changes
~~(f)~~ 93102.10	~~i~~Inspection maintenance requirements	equivalent means of assuring compliance	District	
~~(g)~~ 93102.11	~~e~~Operation and maintenance plans	equivalent means of assuring compliance	District	
~~(h)(1)(10)~~ 93102.12 (a) through (f) and (h) through (j)	~~r~~Record-keeping	equivalent means of assuring compliance	District[8]	U. S. EPA[9]
~~(h)(11)~~ 93102.12(l)	~~r~~Retention of records	assure historical records available for up to 5 years	District[8]	U. S. EPA[9]
~~(i)~~ 93102.13	~~r~~Reporting	equivalent means of assuring compliance	District[8]	U. S. EPA[9]

1. U.S. EPA or the implementing agency in accordance with any delegation of authority to approve alternatives from the U.S. EPA.

2. Minor change to test method means: (1) A modification to a federally enforceable test method that: (i) Does not decrease the stringency of the emission limitation or standard; (ii) Has no national significance (e.g., does not affect implementation of the applicable regulation for other affected sources, does not set a national precedent, and individually does not result in a revision to the test method); and (iii) Is site-specific, made to reflect or accommodate the operational characteristics, physical constraints, or safety concerns of an affected source. (2) Examples of minor changes to a test method include, but are not limited to: (i) Field adjustments in a test method's sampling procedure, such as a modified sampling traverse or location to avoid interference from an obstruction in the stack, increasing the sampling time or volume, use of additional impingers for a high moisture situation, accepting particulate emission results for a test run that was conducted with a lower than specified temperature, substitution of a material in the sampling train that has been demonstrated to be more inert for the sample matrix; and (ii) Changes in recovery and analytical techniques such as a change in quality control/quality assurance requirements needed to adjust for analysis of a certain sample matrix.

3. Intermediate change to test method means a within-method modification to a federally enforceable test method involving ``proven technology'' (generally accepted by the scientific community as equivalent or better) that is applied on a site-specific basis and that may have the potential to decrease the stringency of the associated emission limitation or standard. Though site-specific, an intermediate change may set a national precedent for a source category and may ultimately result in a revision to the federally enforceable test method. In order to be approved, an intermediate change must be validated according to EPA Method 301 (Part 63, Appendix A) to demonstrate that it provides equal or improved accuracy and precision. Examples of intermediate changes to a test method include, but are not limited to: (1) Modifications to a test method's sampling procedure including substitution of sampling equipment that has been demonstrated for a particular sample matrix, and use of a different impinger absorbing solution; (2) Changes in sample recovery procedures and analytical techniques, such as changes to sample holding times and use of a different analytical finish with proven capability for the analyte of interest; and (3) ``Combining'' a federally required method with another proven method for application to processes emitting multiple pollutants.

4. Major change to test method means a modification to a federally enforceable test method that uses ``unproven technology or procedures'' (not generally accepted by the scientific community) or is an entirely new method (sometimes necessary when the required test method is unsuitable). A major change to a test method may be site-specific, or may apply to one or more sources or source categories, and will almost always set a national precedent. In order to be approved, a major change must be validated according to EPA Method 301 (Part 63, Appendix A). Examples of major changes to a test method include, but are not limited to: (1) Use of an unproven analytical finish; (2) Use of a method developed to fill a test method gap; (3) Use of a new test method developed to apply to a control technology not contemplated in the applicable regulation; and (4) Combining two or more sampling/analytical methods (at least one unproven) into one for application to processes emitting multiple pollutants.

5. Minor change to monitoring means: (1) A modification to federally required monitoring that: (i) Does not decrease the stringency of the compliance and enforcement measures for the relevant standard; (ii) Has no national significance (e.g., does not affect implementation of the applicable regulation for other affected sources, does not set a national precedent, and individually does not result in a

revision to the monitoring requirements); and (iii) Is site-specific, made to reflect or accommodate the operational characteristics, physical constraints, or safety concerns of an affected source. (2) Examples of minor changes to monitoring include, but are not limited to: (i) Modifications to a sampling procedure, such as use of an improved sample conditioning system to reduce maintenance requirements; (ii) Increased monitoring frequency; and (iii) Modification of the environmental shelter to moderate temperature fluctuation and thus protect the analytical instrumentation.

6. Intermediate change to monitoring means a modification to federally required monitoring involving ``proven technology'' (generally accepted by the scientific community as equivalent or better) that is applied on a site-specific basis and that may have the potential to decrease the stringency of the associated emission limitation or standard. Though site-specific, an intermediate change may set a national precedent for a source category and may ultimately result in a revision to the federally required monitoring. Examples of intermediate changes to monitoring include, but are not limited to: (1) Use of a continuous emission monitoring system (CEMS) in lieu of a parameter monitoring approach; (2) Decreased frequency for non-continuous parameter monitoring or physical inspections; (3) Changes to quality control requirements for parameter monitoring; and (4) Use of an electronic data reduction system in lieu of manual data reduction.

7. Major change to monitoring means a modification to federally required monitoring that uses ``unproven technology or procedures'' (not generally accepted by the scientific community) or is an entirely new method (sometimes necessary when the required monitoring is unsuitable). A major change to monitoring may be site-specific or may apply to one or more source categories and will almost always set a national precedent. Examples of major changes to monitoring include, but are not limited to: (1) Use of a new monitoring approach developed to apply to a control technology not contemplated in the applicable regulation; (2) Use of a predictive emission monitoring system (PEMS) in place of a required continuous emission monitoring system (CEMS); (3) Use of alternative calibration procedures that do not involve calibration gases or test cells; (4) Use of an analytical technology that differs from that specified by a performance specification; (5) Decreased monitoring frequency for a continuous emission monitoring system, continuous opacity monitoring system, predictive emission monitoring system, or continuous parameter monitoring system; (6) Decreased monitoring frequency for a leak detection and repair program; and (7) Use of alternative averaging times for reporting purposes.

8. Minor change to recordkeeping/reporting means: (1) A modification to federally required recordkeeping or reporting that: (i) Does not decrease the stringency of the compliance and enforcement measures for the relevant standards; (ii) Has no national significance (e.g., does not affect implementation of the applicable regulation for other affected sources, does not set a national precedent, and individually does not result in a revision to the recordkeeping or reporting requirement); and (iii) Is site-specific. (2) Examples of minor changes to recordkeeping or reporting include, but are not limited to: (i) Changes to recordkeeping necessitated by alternatives to monitoring; (ii) Increased frequency of recordkeeping or reporting, or increased record retention periods; (iii) Increased reliability in the form of recording monitoring data, e.g., electronic or automatic recording as opposed to manual recording of monitoring data; (iv) Changes related to compliance extensions granted pursuant to Sec. 63.6(i); (v) Changes to recordkeeping for good cause shown for a fixed short duration, e.g., facility shutdown; (vi) changes to recordkeeping or reporting that is clearly redundant with equivalent recordkeeping/reporting requirements; and (vii) Decreases in the frequency of reporting for area sources to no less than once a year for good cause shown, or for major sources to no less than twice a year as required by title V, for good cause shown.

9. Major change to recordkeeping/reporting means: (1) A modification to federally required recordkeeping or reporting that: (i) May decrease the stringency of the required compliance and enforcement measures for the relevant standards; (ii) May have national significance (e.g., might affect implementation of the applicable regulation for other affected sources, might set a national precedent); or (iii) Is not site-specific. (2) Examples of major changes to recordkeeping and reporting include, but are not limited to: (i) Decreases in the record retention for all records; (ii) Waiver of all or most recordkeeping or reporting requirements; (iii) Major changes to the contents of reports; or (iv) Decreases in the reliability of recordkeeping or reporting (e.g., manual recording of monitoring data instead of required automated or electronic recording, or paper reports where electronic reporting may have been required).

Peter M. Rooney
Secretary for
Environmental
Protection

Air Resources Board

John D. Dunlap, III, Chairman
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Pete Wilson
Governor

June 19, 1998

Mr. David Howekamp
United States Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

Dear Mr. Howekamp:

Enclosed you will find the signed *"Memorandum of Agreement Between the United States Environmental Protection Agency (U.S. EPA) Region IX and the California Air Resources Board for Reviewing Alternative Requirements Pursuant to the California Chromium, Ethylene Oxide Sterilizer, and Perchloroethylene Dry Cleaning Air Toxics Control Measures."* We appreciate your commitment to expeditiously review and approve alternative requirements for these three source categories. We see this as a positive step toward improving the integration of the California program with the federal air toxics program. We encourage you to extend this agreement to include all federal air toxics regulations.

In conjunction with this agreement, we ask you to work diligently to ensure that delegation of the authority to approve alternative requirements occurs as soon as possible. Based on our common experience reviewing existing performance tests for the chromium facilities in California, we believe you will agree that delegation of authorities to California agencies makes sense.

As always, I remain committed to working with you to ensure that public health benefits are achieved in California. If you have any questions, please call me at (916) 445-4383 or have your staff contact Mr. Robert Fletcher at (916) 322-6023.

Sincerely,

Michael P. Kenny
Executive Officer

Enclosure

cc: Mr. Robert D. Fletcher, Chief
Emissions Assessment Branch
Stationary Source Division

Memorandum of Agreement Between USEPA Region IX and the California Air Resources Board for Reviewing Alternative Requirements Pursuant to the California Chromium, Ethylene Oxide Sterilizer, and Perchloroethylene Dry Cleaning Air Toxics Control Measures

USEPA Region IX commits to reviewing and approving or disapproving alternative requirement requests submitted to EPA by the California Air Resources Board (CARB) and local agencies pursuant to the CARB Chromium, Ethylene Oxide Sterilizer, and Perchloroethylene Air Toxics Control Measures'[1] (ATCM) alternative requirements provisions. EPA's review and approval or disapproval of these requests will be transmitted in writing within 45 days of receipt where the CARB or local agencies have determined that approval of alternative requirements should be granted.

David P. Howekamp, Director
EPA Region IX Air Division

Michael P. Kenny, Executive Officer
California Air Resources Board

[1] or locally-adopted rules which implement the requirements of the ATCMs.

bcc: Cliff Popejoy, SSD
Dan Donohoue, SSD
Lisa Jennings, SSD
Ron Walter, SSD