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CALIFORNIA AIR POLLUTION CONTROL OFFICER'S ASSOCIATION

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March 12, 1999

Air and Radiation Docket and Information Center (6102)
Room M-1500
United States Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

Attention: **Docket Number A-97-29**
Proposed amendments to 40 CFR Part 63, Subpart E

Dear Sir or Madam,

The California Air Pollution Control Officers Association (CAPCOA) respectfully submits comments on the proposed amendments to 40 CFR Part 63, Subpart E. CAPCOA represents the thirty-three local air pollution control and air quality management districts in California.

The Subpart E regulation, implementing the provisions of section 112(l) of the federal Clean Air Act, is of particular importance to CAPCOA and its member districts. Section 112(l) was included in the Act when it was amended in 1990, in order to provide flexibility to state and local agencies which already had established, effective air toxics programs. We believe, and have worked exhaustively for the last decade to demonstrate, that California has such programs.

Since the Clean Air Act was amended in 1990, California has participated at the state and local level in EPA conferences, workshops, policy retreats, partnerships, rule development efforts, reinventions, task forces, strike forces, and negotiating sessions, all intended to address California's legitimate need for flexibility under Section 112. At every event, and in every communication, we have underscored our commitment to meet or exceed the emissions reductions mandated by Section 112 programs. We are seeking the flexibility to accomplish them in the most efficient and effective way, making full use of our existing, comprehensive air programs. Revision of the Subpart E rule is a critical action in providing such flexibility

California has implemented successful air pollution control programs for half a century, leading the nation to new and better pollution control. Local air districts have been the cornerstone of California's stationary source control. For almost twenty years, we have been requiring the best available control on even small quantities of air toxics through risk-based new source review, and through technology-based prohibitory rules. California also has the most comprehensive inventory of toxic emissions and risk from stationary sources in the nation. It is with this considerable background that we offer our comments on your proposal.

CAPCOA has three major areas of concern. Specifically, we believe that the proposal must: (1) provide rapid review and approval of alternative control technology requirements that are made through new source review; (2) delegate day-to-day management of the program to state and local agencies, and recognize local operating permits as a vehicle for implementing the program; and (3) provide broader authority to Regional Offices to enter into equivalency agreements with state and local agencies.

Review of New Source Review (NSR) decisions: California has a long history of using NSR, and toxics NSR, to significantly advance the control of stationary source emissions. Many of the industries we regulate (such as the computer industry) rely on quick response to market needs; local districts have designed shortened permit review processes that incorporate the very best controls up front, in order to address this industry need. The result is that everyone benefits, because emissions are reduced, permitting is quick, and technology is continually advanced. A six-month delay for federal review of permits would devastate our programs. The current multi-year process is completely unworkable.

Delegating authority to state and local agencies: There are over a thousand engineers, technicians, and specialists implementing and enforcing the local air programs in California. They possess a level of knowledge of the local sources (and the technologies that control their emissions) that often cannot be found in federal offices that are hundreds or thousands of miles away. In addition to local resources, the California Air Resources Board exercises careful oversight of district operations. The most efficient use of resources and expertise will rely on local decision making for day-to-day, site-specific issues, with State review of the more significant decisions, and periodic audit of ongoing program management. Only the most significant issues should be subject to full, federal process. An important vehicle for carrying this out will be the local operating permit. Even small sources that are not subject to federal permit programs have local permits. As Section 112 requirements affect more and more small sources, these local permits will be a critical part of ensuring that emission reductions are made. These documents can serve to assure oversight agencies that and equivalent program is in place, and that program objectives are being achieved. If the Subpart E rule does not specifically recognize local operating permits for demonstrating equivalency, it is imperative that the rule allow Regional Offices to enter into agreements with state and local agencies, and the agreements be able to recognize local permits.

Equivalency Agreements: CAPCOA understands that the Subpart E rule cannot address all of the issues that will arise in the demonstration and determination that a program provides toxics control benefits equivalent to the federal program. Nor is it possible today to conceive of all the possible ways in which equivalent benefits might be realized and demonstrated. For this reason, we believe that Regional Offices should have broad authority to enter into agreements with state and local agencies regarding equivalency demonstrations, and program implementation. Such agreements can rely on the most current information technology, the best data, and innovative solutions to previously untenable problems. They can also address the specific strengths and expertise, as well as the needs and concerns of the agencies involved.

The recognition of our existing programs, and the flexibility to maintain and improve upon them, are of the highest importance to CAPCOA. We believe the three issues discussed above are absolutely critical to successful implementation of the federal air toxics program in California. Additional comments on the Subpart E proposal are enclosed with this letter. If you have any questions about these comments, or about CAPCOA's concerns in general, please contact Ms. Barbara A. Lee, the Air Pollution Control Officer in Northern Sonoma County, at (707) 433-5911.

Thank you for the opportunity to comment on your proposal.

Sincerely,

Douglas W. Allard

Douglas W. Allard, President
Enclosure

The following comments on 40 CFR Part 63, Subpart E are submitted by the California Air Pollution Control Officers Association, enclosed with the comment letter, dated March 11, 1999, for Docket Number A-97-29.

Critical Issues: *(note- these issues were addressed in detail in the comment letter)*

1. New Source Review- The amended Subpart E rule must include provisions for the rapid and timely review and approval of alternative control technology decisions under new source review, and toxics new source review by state and local agencies.

2. Delegation of Authority- The amended Subpart E rule must delegate the day-to-day program management decisions to state and local agencies. The rule should recognize local operating permits as a vehicle for demonstrating and implementing an equivalent program. If the rule does not explicitly do this, the Regional Offices should be given authority to do so through equivalency implementation agreements with state and local agencies.

3. Equivalency Implementation Agreements- The amended Subpart E rule must provide substantial authority to Regional Offices to enter into agreements with state and local agencies to address broad aspects of equivalency demonstration and program implementation.

Additional Comments:

1. Minor Changes- The amended Subpart E rule needs an expeditious and timely approval process for minor, nonsubstantive changes. These are changes that do not affect the magnitude of emissions reductions, or the fundamental enforcement of the limits. They may, however, be significant from a resource perspective. EPA should not focus a disproportionate amount of its resources, or the resources of state and local agencies, on issues that have little or no environmental impact.

2. Restrictions on Equivalency-by-Permit- The amended Subpart E rule should allow for equivalency by permit for both major and area sources. This can include permit templates and general permits. In addition, there should be no restriction on the number of sources within a source category that can use the equivalency-by-permit option. CAPCOA understands that EPA is not certain whether this option will be widely used. It may not be. At the same time, the intent of 112(l), and of Subpart E, is to provide for efficient, effective, equivalent program implementation. Including such provisions in the Subpart E rule is not resource-intensive. The provisions can, however, result in significant resource savings when they needed and used.

3. Work Practice Standards- The amended Subpart E rule needs to differentiate between those Work Practice Standards that result in clear, quantifiable emissions reductions, and the Work Practice Requirements which are designed to improve operation and performance, but do not have quantifiable benefits. The demonstration of equivalency for the two must be different. Where benefits are quantifiable, it is appropriate to demonstrate that equivalent emissions benefits are achieved. Where benefits are not quantifiable, it is more appropriate to demonstrate that the intent of enhanced operation and/or performance is met.

4. Risk-based Approaches- The amended Subpart E rule should recognize and accommodate risk-based program elements, including the identification of toxic air contaminants, determination of health risk values, development and use of site-specific risk assessments, and implementation of risk reduction programs. It is important to bear in mind that there are important program elements in Section 112 that address risk. It would be very short sighted to exclude these elements from these amendments to Subpart E. In addition, the results of such efforts may be substantial, lasting, and enforceable reductions in toxic emissions. As such, they should be considered equivalent on a case-by-case basis when compared to federal requirements for the same source.

5. Approval Process- The overall submittal and approval process should be streamlined and simplified in the amended Subpart E. There are limited dollars available for air pollution control. Every hour or dollar consumed by administrative tasks is taken away from enforcement and program advances. We should spend the greatest part of our resources on achieving emissions control, not on administrative processes. The more efficient the equivalency process is, the more effective are all of our resources.