STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

BILL LOCKYER
ATTORNEY GENERAL

November 3, 2003

Ms. Marianne Lamont Horinko
Acting Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: California's Authority to Implement Title V of the Clean Air Act - Update

Dear Ms. Horinko:

As Attorney General of the State of California, and pursuant to section 502(d)(1) of the federal Clean Air Act, I am submitting this letter to inform you of my opinion that the laws of the State of California now provide adequate authority to carry out the Clean Air Act's Title V permit program (42 U.S.C. § 7661 et seq.). This letter is prompted by recent state legislation eliminating the exemption for agriculture from California's permit program.

On March 21, 2001, I submitted to you my written opinion that the laws of this state provide adequate authority to carry out all aspects of the Title V operating permit program, except for the authority to issue permits for "equipment used in agricultural operations in the growing of crops or the raising of fowl or animals." Until the current legislative session, section 42310, subdivision (e), of the California Health and Safety Code specifically exempted these potential Title V sources from California's general permit requirement (Cal. Health & Safety Code, § 42300 et seq.). At that time, I stated that in the event legislation eliminated the exemption for agricultural equipment, which emits sufficient quantities of air contaminants to be a Title V source, I would amend the opinion accordingly. That is the purpose of this letter.

The California Legislature has enacted, and the Governor has signed, Senate Bill 700, enclosed, which deletes subdivision (e) from California Health and Safety Code section 42310. (Cal. Health & Saf. Code, § 42310, amended by Stats. 2003, ch. 479, § 12.) Thus, effective January 1, 2004, section 42310 will no longer exempt equipment used in agricultural operations from the permit provisions of state law. In addition, Senate Bill 700 commands California's

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local air districts to have permit systems that require agricultural sources to obtain permits in accordance with Title I and Title V of the Clean Air Act. Specifically, section 9 of Senate Bill 700 adds the following paragraph to the California Health and Safety Code:

> In addition to complying with the requirements of this chapter, a permit system established by a district pursuant to Section 42300 shall ensure that any agricultural source that is required to obtain a permit pursuant to Title I (42 U.S.C. Sec. 7401 et seq.) or Title V (42 U.S.C. Sec. 7661 et seq.) of the federal Clean Air Act is required by district regulation to obtain a permit in a manner that is consistent with the federal requirements.

(Cal. Health & Saf. Code, § 42301.16, subd. (a), added by Stats. 2003, ch. 479, § 9.) This section applies to any "agricultural source," which is defined to include Title V sources. (Cal. Health & Saf. Code, § 39011.5, subd. (a)(3), added by Stats. 2003, ch. 479, § 2.)

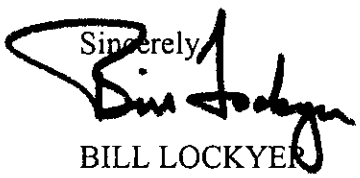
Senate Bill 700 imposes certain additional requirements that are designed to further reduce emissions from agricultural sources, and these are drafted so as not to conflict with obligations under Title V. For instance, section 6 sets up a permit system for large confined animal facilities, but this section explicitly does not interfere with the implementation of the Clean Air Act:

> Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed on a district or a source of air pollution pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(Cal. Health & Safety Code, § 40724.6, subd. (e), added by Stats. 2003, ch. 479, § 6; accord, Cal. Health & Safety Code, § 40724.6, subd. (i), added by Stats. 2003, ch. 479, § 6.)

In conclusion, Senate Bill 700 extends California's operating permit program to include agricultural sources so that the program applies to all sources of air pollution within California that are required to have permits pursuant to Title V of the Clean Air Act. Furthermore, Senate Bill 700 ensures that the permits issued to agricultural sources will comply with all applicable requirements of the Clean Air Act. The State of California, therefore, now satisfies the requirement that its laws provide the authority to carry out its Title V permit program.

Sincerely,



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Attorney General

Enclosure: Senate Bill 700