

VIA FAX (212) 637-3901 AND REGULAR MAIL

December 29, 2005

Raymond Werner
Chief, Air Programs Branch
United States Environmental Protection Agency
Region II
290 Broadway – 26th Floor
New York, NY 10007-7866

**SUBJECT: NEW JERSEY'S NON-ATTAINMENT NEW SOURCE REVIEW RULE
EQUIVALENCY DEMONSTRATION**

Dear Mr. Werner:

The New Jersey Department of Environmental Protection (Department) is submitting this demonstration that its existing non-attainment New Source Review (NSR) program, codified in N.J.A.C. 7:27-18 (Emission Offset Rule), is at least as stringent as the revised base program promulgated by the United States Environmental Protection Agency (EPA) and codified at 40 C.F.R. 51.165 and 52.24 (December 31, 2002 NSR Rule). Accordingly, the Emission Offset Rule is equivalent and/or at least as effective overall. The Department also explains how New Jersey has already satisfied the State Implementation Plan (SIP) provisions that the EPA identified in 1994 and 1996 as not adhering to EPA guidance at that time, and how changes to EPA rules have made some of them moot.

In the preamble to the December 31, 2002 NSR Rule, EPA provided that states must revise their SIPs in accordance with this rule or demonstrate that their existing NSR programs are at least as stringent as EPA's base program by January 2, 2006. See 67 Fed. Reg. 80186, 80241 (Dec. 31, 2002).¹ We are making this demonstration in absence of any criteria or guidance on equivalency demonstration.

New Jersey evaluated and commented on numerous EPA NSR actions, several of which still ongoing, that will affect NSR equivalency. New Jersey also actively participated with STAPPA/ALAPCO in developing the New Source Review Menu of Options that was released on July 12, 2004, and that suggested improvements to the December 31, 2002 NSR Rule. New Jersey continues to work with other states to develop NSR

¹ The January 2, 2006 deadline is not applicable to New Jersey's PSD permit program because New Jersey is a PSD-delegated state.

revisions that are more protective, more understandable, more enforceable, and more practical than the federal rules.

New Jersey has compared its Emission Offset Rule with the EPA revised base program and has determined that the Emission Offset Rule is at least as stringent because the Emission Offset Rule is more effective in terms of requiring sources to comply with the NSR requirements (more stringent applicability requirements), and because many of the other requirements in the New Jersey rule are also more stringent than the EPA requirements. New Jersey's comparison also considered the possible benefits of the plant-wide applicability limit (PAL) provision contained in the December 31, 2002 NSR Rule, if in the unlikely event a source elects to be covered by a PAL. A demonstration of more stringent provisions is provided in Attachment-1. A mathematical comparison of NSR applicability options is provided in Attachment-2, showing that the New Jersey NSR applicability test is more stringent than the EPA test.

New Jersey notes that the seven SIP provisions that EPA identified in the November 10, 1994 and July 25, 1996 Federal Registers, as not adhering to EPA guidance at that time, have either been cured or are moot. The Department and EPA agreed that these provisions would be addressed in two-phases. New Jersey has already addressed four of them as Phase-1 modifications in the January 31, 1997 SIP submittal to EPA. In its January 31, 1997 SIP submittal, the Department indicated that it would address the remaining three as phase-2 modifications in a future rulemaking after EPA modified its NSR rules with respect to NSR applicability. EPA's NSR rule modifications are still in progress. Nevertheless, New Jersey has reviewed the December 31, 2002 NSR reforms, referred as EPA NSR Reform I, as well as court decisions, and has determined that the three remaining provisions are not less stringent or have been rendered moot as discussed in Attachment-3 to this letter.

We had expected the EPA NSR Reform rules to increase NSR applicability and improve protection of the environment. That has not been the case, and we find that our rules are now more stringent than the current EPA NSR rules. While the New Jersey NSR applicability triggers are more stringent than the current EPA rule, we are considering rule changes to make them even more stringent, including use of EPA's previous "actual to potential" test.

The Department intends to further improve the New Jersey Emission Offset Rule and submit these improvements to EPA as a SIP revision, after uncertainties surrounding EPA's recent NSR rulemakings are more fully resolved. The uncertainties continue and include a pending decision by the court on the October 27, 2003 Replacement NSR rule, 68 Fed. Reg. 61248, stayed on December 24, 2003 (referred to as EPA NSR Reform II); proposed PM-2.5 implementation standards that affect NSR; just adopted ozone implementation standards that affect NSR; pending EPA action and guidance on the remanded portion of the EPA NSR Reform I Rule concerning monitoring and record keeping; and the just proposed change of NSR applicability from an annual to an hourly test (EPA NSR Reform III). New Jersey also plans to develop and incorporate its own Prevention of Significant Deterioration (PSD) rule for submission to EPA.

If you have any questions regarding this demonstration, please do not hesitate to contact me at (609) 984-1484.

Sincerely,

William O'Sullivan, P.E.
Director
Division of Air Quality

Enclosures:

Copy without enclosures to:

Bradley M. Campbell, Commissioner
Steve Riva, Chief, Air Permitting, Region II { VIA FAX (212) 637-3901 }

Copy with enclosures to:

Raymond Werner, Chief, Air Programs Branch, USEPA Region II
Steve Riva, Chief, Air Permitting, Region II
Sam Wolfe, Assistant Commissioner, Environmental Regulation
William O'Sullivan, Director
John Preczewski, Assistant Director
Chris Salmi, Assistant Director
Howard Geduldig, DAG, DOL
Ruth Carter, DAG, DOL
Lou Mikolajczyk, Chief
Ketan Bhandutia, Supervisor

List of Enclosures:

Attachment-1: A Comparison of New Jersey's existing N.J.A.C. 7:27-18 (Emission Offset Rule) with the EPA's 40 CFR 51.165 and 52.24 (NSR reform rules) demonstrating that the existing Emission Offset Rule is at least as stringent as EPA's base program

Appendix 1-A: A copy of the N.J.A.C. 7:27-18

Attachment-2: A Comparison of NSR Applicability Options - Proof on how the EPA current applicability rule is the least stringent option, and the

New Jersey current rule is more stringent than the EPA current rule governing NSR applicability

Attachment-3: New Jersey Emission Offset Rule – Former SIP provisions

Appendix 3-A: A copy of the November 10, 1994 Federal Register

Appendix 3-B: A copy of the July 25, 1996 Federal Register

Appendix 3-C: A copy of the January 31, 1997 SIP submittal from Former Commissioner Shin to EPA