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December 13, 2007

Kay T. Prince, Chief
Air Planning Branch
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303-8960

Re: Section 110 Requirements

Dear Ms. Prince:

On November 16, 2007, Ms Jane Spann with U.S. EPA Region 4, Air, Pesticides and Toxics Management Division contacted the South Carolina Department of Health and Environmental Control ("Department") via electronic mail to request additional information and clarification related to Clean Air Act (CAA) Section 110(a)(1) and (2) requirements for the 1997 8-hour ozone and fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS). Specifically this request referenced several elements outlined in an October 2, 2007, EPA memo entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} NAAQS."

On November 20, 2007, the Department responded to this request via electronic mail stating that all of the aforementioned elements pertaining to the 8-hour ozone standard were addressed under the provisions of the South Carolina Air Quality Implementation Plan. However, during a conference call on November 26, 2007, Region 4 staff requested that each state within the region provide a formal letter certifying that its respective State Implementation Plan (SIP) addresses all of the aforementioned required elements listed in Attachment A of the October 2, 2007, guidance memo. Please note that each State regulation referenced in the attachment to this letter is currently included in (or has been submitted to EPA for approval as part of) South Carolina's SIP. Further, as provided for by Section 48-1-50 of the 1976 South Carolina Code of Laws (as amended), the Department has the statutory authority to implement and amend its SIP.

As outlined in the enclosed attachment to this letter, the Department is certifying to the EPA that the "infrastructure" elements pertaining to the 8-hour ozone standard [as required under Sections 110(a)(1) and (2) of the CAA] have been addressed. The Department appreciates the opportunity for continued consultation with EPA. Should you require any additional information on these matters, please do not hesitate to contact Stacey Gardner of my staff at (803) 898-4287 or gardnesr@dhec.sc.gov.

Sincerely,

Robert W. King, Jr., P.E.
Deputy Commissioner
Environmental Quality Control

Attachment - South Carolina Certification: Clean Air Act Sections 110(a)(1) and (a)(2), 8-hour Ozone

cc: Myra C. Reece, Chief, Bureau of Air Quality, SCDHEC
Robert J. Brown, Jr., Director, Division of Air Planning, Development & Outreach, SCDHEC
Stacey Gardner, Manager, Regulation Development Section, SCDHEC

South Carolina Certification:
Clean Air Act Sections 110(a)(1) and 110(a)(2)
8-hour Ozone Requirements

December 13, 2007

Emission limits and other control measures: Section 110(a)(2)(A) of the Clean Air Act (CAA) requires State Implementation Plans (SIPs) to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters. South Carolina Air Pollution Control Regulation 61-62.5, Standard No. 2, *Ambient Air Quality Standards*, serves to establish emission limits for ozone, while Regulation 61-62.1, *Definitions and General Requirements*, addresses required control measures, means, and techniques. Section 48-1-50(23) of the 1976 South Carolina Code of Laws, as amended (hereinafter referred to as S.C. Code Ann.), provides the Department with the statutory authority to “*Adopt emission and effluent control regulations, standards and limitations that are applicable to the entire State, that are applicable only within specified areas or zones of the State, or that are applicable only when a specified class of pollutant is present.*”

Ambient air quality monitoring/data system: Section 110(a)(2)(B) of the CAA requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collection and analysis of ambient air quality data, and presentation of these data to the EPA upon request. Regulation 61.62.5, Standard No. 7, *Prevention of Significant Deterioration*, along with the *South Carolina Network Description and Ambient Air Network Monitoring Plan* (conditionally approved by EPA in November 2007), provides for an ambient air quality monitoring system in the State. S.C. Code Ann. § 48-1-50(14) provides the Department with the necessary statutory authority to “*Collect and disseminate information on air or water control.*”

Program for enforcement of control measures: Section 110(a)(2)(C) of the CAA requires States to implement a program that provides for the enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet prevention of significant deterioration (PSD) and nonattainment new source review (NSR) requirements. Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, and Regulation 61-62.5, Standard No. 7.1, *Nonattainment New Source Review*, apply to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as attainment or unclassifiable. On July 1, 2005, the Department submitted its PSD/NSR SIP revision to EPA for approval. In August 2007, the EPA sent to the State a draft conditional approval letter that indicated modifications to the State PSD and NSR rules were necessary. On November 20, 2007, the Department sent to the EPA a written response outlining its commitment to making those modifications. Upon publication of EPA’s final notice of conditional approval of these State rules in the *Federal Register*, the Department will thereafter commence with necessary changes to the regulations. S.C. Code Ann. § 48-1-50(10) provides the

Department with the statutory authority to “Require to be submitted to it and consider for approval plans for disposal systems or sources or any parts thereof and inspect the construction thereof for compliance with the approved plans.” Further, S.C. Code Ann. § 48-1-50(11) provides the Department with the statutory authority to “Administer penalties as otherwise provided herein for violations of this chapter, including any order, permit, regulation or standards.”

Interstate transport: Section 110(a)(2)(D) of the CAA requires SIPs to include provisions prohibiting any source or other type of emissions activity in one State from contributing significantly to nonattainment or from interfering with attainment of NAAQS in another State. States are required to submit 110(a)(2)(D)(i) plans to demonstrate compliance with these provisions. On June 25, 2007, South Carolina submitted its 110(a)(2)(D)(i) plan to EPA. In this submittal, South Carolina made a demonstration that it met the required four-pronged set of criteria as outlined below.

State SIPs must contain adequate provisions prohibiting any source or other type of emissions activity within the State from emitting any air pollutants in amounts that will:

1. Contribute significantly to nonattainment of NAAQS for areas in another State. **(Prong 1)**

South Carolina’s Clean Air Interstate Rule (CAIR) became state-effective on June 22, 2007. On December 10, 2007, EPA’s approval of South Carolina’s CAIR as a direct final rule became effective. South Carolina’s participation in the CAIR trading program will satisfy this criterion.

2. Interfere with maintenance of NAAQS by any other State. **(Prong 2)**

Again, South Carolina’s implementation of CAIR and participation in the trading program will satisfy this criterion.

3. Interfere with measures required to meet the implementation plan for any other State related to Prevention of Significant Deterioration (PSD). **(Prong 3)**

South Carolina’s participation in the CAIR trading program; implementation of Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration, and Regulation 61-62.5, Standard No. 7.1, Nonattainment New Source Review (both of which provide for a preconstruction review and permitting program for major sources of air pollutants); and adoption of the requirements of the Phase II ozone implementation rule for the York County, South Carolina, portion of the Charlotte-Gastonia-Rock Hill, NC-SC 8-hour ozone nonattainment area (submitted to EPA for approval on June 8, 2007) collectively satisfy this criterion.

4. Interfere with measures required to meet the implementation plan for any other State related to Regional Haze and Visibility. (Prong 4)

South Carolina will satisfy this criterion through its Regional Haze Implementation Plan (the prehearing SIP package was submitted to EPA on November 9, 2007). The Regional Haze Implementation Plan was developed in consultation with other states, Federal Land Managers, and regional planning organizations; the Department is making its best effort to meet EPA's December 17, 2007, submission deadline for the final Regional Haze Implementation Plan.

Adequate resources: Section 110(a)(2)(E) of the CAA requires states to provide for adequate personnel, funding, and legal authority under State Law to carry out their SIPs and related issues. The Department is provided its legal authority to establish a SIP and implement related plans, in general, under S.C. Code Ann. Section 48, Title 1. Specifically, S.C. Code Ann. § 48-1-50(12) grants the Department the statutory authority to “Accept, receive and administer grants or other funds or gifts for the purpose of carrying out any of the purposes of this chapter; accept, receive and receipt for Federal money given by the Federal government under any Federal law to the State of South Carolina for air or water control activities, surveys or programs.” S.C. Code Ann. Section 48, Title 2 grants the Department statutory authority to establish environmental protection funds. Additionally, Regulation 61-30, *Environmental Protection Fees*, provides the Department with the ability to assess fees for environmental permitting programs. The Department implements the SIP in accordance with the provisions of S.C. Code Ann. § 1-23-40 (the Administrative Procedures Act) and S.C. Code Ann. Section 48, Title 1.

Stationary source monitoring system: Section 110(a)(2)(F) of the CAA requires States to establish a system to monitor emissions from stationary sources and to submit periodic emissions reports. Regulation 61-62.1, *Definitions and General Requirements*, provides for an emission inventory plan that establishes reporting requirements, while S.C. Code Ann. § 48-1-22 provides the Department with the statutory authority to “Require the owner or operator of any source or disposal system to establish and maintain such operational records; make reports; install, use, and maintain monitoring equipment or methods; sample and analyze emissions or discharges in accordance with prescribed methods, at locations, intervals, and procedures as the Department shall prescribe; and provide such other information as the Department reasonably may require.”

Emergency power: Section 110(a)(2)(G) of the CAA requires state to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs. Regulation 61-62.3, *Air Pollution Episodes*, requires that the Department provide for contingency measures when air pollution episode or exceedance that may lead to a substantial threat to the health or persons in the State or region. S.C. Code Ann. § 48-1-290 grants the Department the statutory authority as follows: “Whenever the Department finds that an emergency exists requiring immediate action to protect the public health or property, the Department, with concurrent notice to the Governor, may without notice or hearing issue an order reciting the existence of such an emergency and requiring that such action be taken as the Department deems necessary

to meet the emergency. Such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but on application to the Department or by direction of the Governor shall be afforded a hearing within forty-eight hours. On the basis of such hearing the Department shall continue such order in effect, revoke it or modify it. Regardless of whether a hearing is held, the Department shall revoke all emergency orders as soon as conditions or operations change to the extent that an emergency no longer exists.” S.C. Code Ann. § 1-23-130 provides the Department with the statutory authority to establish emergency regulations.

Future SIP revisions: Section 110(a)(2)(H) of the CAA requires States to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate. S.C. Code Ann. Section 48, Title 1 provides the Department the statutory authority to revise the SIP to accommodate changes in the NAAQS.

Consultation with government officials: Section 110(a)(2)(J) of the CAA requires States to provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements pursuant to CAA Section 121 relating to consultation. Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, as well as provisions in separate implementation plans (such as the five-year review process under the Regional Haze Implementation Plan, which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs) provide for continued consultation with government officials. Additionally, S.C. Code Ann. § 48-1-50(8) provides the Department with the statutory authority to “*Cooperate with the governments of the United States or other states or State agencies or organizations, official or unofficial, in respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements.*”

Public notification: Section 110(a)(2)(J) further requires States to notify the public in NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. The Department has several public notice mechanisms in place to notify the public of ozone and other pollutant forecasting and has an extensive outreach program to educate the public and promote voluntary emission reduction measures. Regulation 61-62.3, *Air Pollution Episodes*, requires that the Department notify the public of any air pollution episode or exceedance. S.C. Code Ann. § 48-1-60 establishes that “*Classification and standards of quality and purity of the environment [are] authorized after notice and hearing.*”

PSD and visibility protection: Section 110(a)(2)(J) of the CAA also requires State to meet applicable requirements of Part C related to PSD and visibility protection. Regulation 61.62.5, Standard No. 7, *Prevention of Significant Deterioration*, as well as the final Regional Haze SIP, will address visibility protection.

Air quality modeling/data: Section 110(a)(2)(K) of the CAA requires that SIPs provide for air quality modeling so that effects on air quality of emissions from any NAAQS pollutant can be predicted and submission of such data to EPA can be made. Regulation 61-62.5, Standard No. 2, *Ambient Air Quality Standards*, and Regulation 61-62.5, Standard No. 7, *Prevention of*

Significant Deterioration (as adopted in the SIP), require that air modeling be conducted to determine permit applicability.

Permitting fees: Section 110(a)(2)(L) of the CAA requires SIPs to include a requirement that each major stationary source pay permitting fees to cover the costs of reviewing, approving, implementing, and enforcing a permit. Pursuant to S.C. Code Ann. § 48-2-50 (1993), the Department shall charge fees for environmental programs it administers pursuant to federal and state law and regulations. Regulation 61-30, *Environmental Protection Fees*, prescribes fees applicable to applicants and holders of permits, licenses, certificates, certifications, and registrations as well as establishes procedures for the payment of fees, provides for the assessment of penalties for nonpayment, and establishes an appeals process for refuting fees.

Consultation/participation by affected local entities: Section 110(a)(2)(M) of the CAA requires States to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration* (as adopted by the SIP), requires that the Department notify the public of the application, preliminary determination, degree of incremental consumption, and the opportunity for comment prior to making a final permitting decision. Likewise, S.C. Code Ann. § 48-1-50(8) allows the Department to “*Cooperate with the governments of the United States or other states or State agencies or organizations, official or unofficial, in respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements.*” Other provisions regarding public hearings and the regulation development process are included in S.C. Code Ann. Section 48, Title 1 in general, and S.C. Code Ann. § 1-23-40 (the Administrative Procedures Act). The Department has worked closely with local political subdivisions in developing the Transportation Conformity SIP, the Regional Haze Implementation Plan, the Early Action Compacts, and the 8-hour Ozone Attainment Demonstration for the York, County, South Carolina, portion of the Metrolina nonattainment area.

Other notes: In September 2007, the Department submitted its 8-hour Ozone Attainment Demonstration for the York County portion of the Metrolina nonattainment area. This document was developed in consultation with many interagency (both Federal and State) partners. In June 2007, the Department submitted its 110(a)(2)(D)(i) plan as final. In October 2007, the Department submitted a 110(a)(1) 8-hour ozone maintenance plan for Cherokee County, South Carolina (which had previously been subject to a one-hour ozone maintenance plan). The Department is currently in the process of updating its Transportation Conformity SIP.

Together these submissions, along with South Carolina's existing Air Quality State Implementation Plan, address the ozone requirements of Section 110(a)(1) and (2) of the CAA.