March 31, 1999

Mr. Doug Allard
President, California Air Pollution
Control Officers Association
232 Western Drive
Cameron Park, CA 95682-9206

Dear Mr. Allard:

This is in response to your association's October 29, 1998 letter to me asking for consideration of the California Air Pollution Control Officers Association's (CAPCOA's) view on the Federal enforceability of terms and conditions in preconstruction permits.[1] As we understand it, CAPCOA's position is that the only preconstruction permit requirements that are federally enforceable are those that are derived from and specifically intended to implement a rule approved in a State implementation plan (SIP). Over the past several months, the Environmental Protection Agency (EPA) has devoted considerable effort to understanding the various views on this issue in arriving on an Agency position.

As you know, title V and the part 70 regulations are designed to put all applicable requirements for a source in a single title V operating permit. To fulfill this charge, it is important that all Federal regulations applicable to the source such as our national emission standards for hazardous air pollutants, new source performance standards, and maximum achievable control technology standards, as well as the

[1]By the term "Federal enforceability," I refer to EPA's and citizens' ability to enforce a provision under sections 113/167 and 304 of the Clean Air Act, respectively. The term "Federal enforceability" has also been used in the past in another context to identify a smaller subset of provisions that may be used to limit a source's "potential to emit." See memorandum from John S. Seitz, Director, Office or Air Quality Planning and Standards, EPA, regarding "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title of the Clean Air Act," January 25, 1995, on page 2 (explaining that for purposes of limiting a source's PTE, "limitations must be enforceable as a practical matter"). This letter does not address this second usage.

applicable requirements of SIP's and permits issued under SIP-approved permit programs, are carried over into a title V permit. All provisions contained in an EPA-approved SIP and all terms and conditions in a permit issued under any SIP-approved permit program are already federally enforceable (see 40 CFR, section 52.23). The enactment of title V did not change this. To the contrary, all such terms and conditions are also federally enforceable "applicable requirements" that must be incorporated into the Federal side of a title V permit (see Clean Air Act, section 504(a); 40 CFR, section 70.20). Thus, if a State does not want a SIP provision or SIP-approved permit condition to be listed on the Federal side of the title V permit, it must take appropriate steps to delete those conditions from its SIP or SIP-approved permit. If there is not such an approved deletion and a SIP provision or condition in a SIP permit is not carried over to the title V permit, then that permit would be subject to an objection by EPA.

I hope this gives you some idea of our thinking. While we have not yet issued detailed guidance on this issue, we will at some future date if appropriate. I would agree with a Region IX recommendation that any remaining uncertainties be handled on a case-by-case basis. The Region has committed to a prompt escalation process should particularly difficult problems arise. I appreciate your thoughts on this matter.

Sincerely,

John S. Seitz /s/
Director
Office of Air Quality Planning
and Standards