August 2, 2010

Mr. Jared Blumenfeld, Regional Administrator
Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Dear Mr. Blumenfeld:

As requested by EPA in the preamble to the Tailoring Rule (75 FR 31514), the San Diego County Air Pollution Control District (District) is providing EPA, Region 9, with the following information regarding its ability to implement the recently promulgated Tailoring Rule requirements for permitting greenhouse gas (GHG) emissions under the federal prevention of significant deterioration (PSD) and Part 70 (Title V) programs. In short, EPA has asked:

(1) Whether the state (i.e., the state or local permitting authority) can, and intends to, apply EPA’s interpretive meaning of the term “subject to regulation” to implement the PSD and Title V permitting for GHGs under its existing rules, and

(2) If the state has no authority under its existing rules to address GHGs in permitting sources in conformance with the Tailoring Rule under PSD or Title V, whether the state plans to revise its rules to implement the Tailoring Rule permitting requirements, and if so, an estimate of the time needed to adopt the final rule revisions.

PSD

With respect to the PSD program, the District is not delegated by EPA to implement federal PSD, nor does it have a state implementation plan (SIP) approved rule implementing federal PSD. Therefore, EPA, Region 9, implements federal PSD in San Diego County under 40 CFR §52.21. Hence, the District currently would have no role in implementing the federal PSD elements included in the Tailoring Rule in San Diego County. Therefore, the requested information is not relevant for the District with respect to PSD.

However, the District is contemplating either incorporating the federal PSD program into the District Rules and Regulations by reference or developing a separate rule for SIP approval incorporating the elements specified in 40 CFR §51.166, including the Tailoring Rule PSD elements. If the District elects to pursue such a course, it anticipates submitting a rule by June 30, 2011, to EPA either to receive federal PSD delegation or SIP approval. Upon EPA approval
or delegation, the District would then be authorized to implement federal PSD, including the Tailoring Rule elements, in San Diego County.

**Title V**

The District implements Title V permitting through District Regulation XIV. Based on the current language of Regulation XIV, in particular Rule 1401—General Provisions, the District has concluded that GHGs are not subject to regulation under the District’s existing Title V rules. This is because the definition of “any regulated air pollutant” in Regulation XIV is restricted to a specific list of pollutants [1401 (c)(39)], which cannot be interpreted to include GHGs at this time (if GHGs were regulated under Section 111 of the Clean Air Act they would be included). The District has also concluded that it does not have authority under Regulation XIV to incorporate federal PSD requirements regarding GHGs into the permits of sources subject to Title V for reasons other than GHG emissions (Title V anyway sources).

The District intends to remedy this situation by amending Regulation XIV to conform to the Tailoring Rule in addressing GHGs under Title V. The District recognizes the need to expeditiously amend Regulation XIV to address GHGs. However, in addition to addressing GHGs in Regulation XIV, the District also has to address the expected reclassification of San Diego County as a serious ozone nonattainment area for the 1997 8-hour ozone standard with an effective date of the reclassification likely to be in February, 2011. This will necessitate revising the Title V permitting thresholds for oxides of nitrogen (NOx) and volatile organic compounds (VOCs) downward from 100 tons per year to 50 tons per year. In order to avoid having to undertake and complete two rule actions, which will require two approvals from EPA, in a short period of time, the District plans amending the rule to address both GHGs and reclassification shortly (within three months) after the reclassification becomes effective. In the event that the reclassification is delayed significantly, the District plans to amend Regulation XIV to address the Tailoring Rule no later than June 30, 2011.

The District believes that amending Regulation XIV by June 30, 2011, is adequate because the District does not believe the Tailoring Rule will have a substantive effect on the Title V program until at least January 1, 2012, and likely not until much later. All existing Title V anyway facilities with PSD permits have completed construction. The District currently has no applications under review for any sources that might trigger PSD requirements for GHGs under Step 1 of the Tailoring Rule that begins January 2, 2011 (i.e., GHG PSD for PSD “anyway” sources), with the possible exception of the Carlsbad Energy Center Project for which EPA, Region 9, is in the process of evaluating the applicability of PSD. If EPA does determine that PSD is applicable for this facility, given the need to then issue a PSD permit, the estimated 12–18 month construction time, and the timelines in Title V, it is unlikely that any PSD requirements would need to be incorporated in that facility’s Title V permit before January 1, 2012, at the earliest.

Although there may be other Title V permits that undergo renewal or permit modifications between the Tailoring Rule Step 1 applicability date of January 1, 2011, and the likely adoption of rule amendments, there are no applicable requirements for GHGs for those facilities at this time since PSD requirements are currently the only applicable requirements for GHGs. Facilities that are only subject to Title V under the Tailoring Rule solely by virtue of their GHG emissions
under Step 2 of the Tailoring Rule for Title V (Step 2 facilities) that begins July 1, 2011, have until July 1, 2012, to submit a Title V application and the District has up to January 1, 2014 to issue their Title V permit. Any new or modified Step 2 facilities would have even longer to incorporate GHG requirements in their Title V permits. For these reasons, the District believes that amending Regulation XIV by June 30, 2011, will not have a significant impact on implementation of Title V permitting in San Diego County.

The District is very interested in addressing these issues in a manner that is satisfactory to EPA and avoids the need for additional regulatory actions by EPA. If the District’s approach outlined above raises concerns, or if you have any questions, please don’t hesitate to contact me at 858-586-2700 or Steven Moore at 858-586-2750. Thank you for your consideration.

Sincerely,

ROBERT J. KARD
Director - Air Pollution Control Officer
San Diego County Air Pollution Control District

RJK:SM:ew

cc: Deborah Jordan, EPA Region 9
    Gerardo Rios, EPA Region 9
    Mike Tollstrup, ARB
    Chris Gallenstein, ARB
    Steven Moore, SDCAPCD