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Category: 45 – Criteria for Plan Revisions for Nonattainment Areas

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

DATE: May 16, 1978

SUBJECT: Your memo dated April 28, 1978 addressed to Robert Duprey

FROM: Dorothy M. Attermeyer, Assistant Regional Counsel

THRU: Thomas F. Harrison, Regional Counsel

TO: Walter C. Barber, Director
Office of Air Quality Planning and Standards, RTP

We were disturbed to read the above-captioned memo. It is next to impossible to include qualifications in regulations that "[control] number[s] may be either too restrictive or too lenient for some facilities" without precipitating a "void for vagueness" criticism in a regulatory context. While your suggestion that a variance procedure be provided in the regulations has been addressed to some extent in 9106, a provision which permits, under certain conditions, the development of alternative control requirements using a modified bubble concept, we would prefer that the interaction of sources and regulators prior to adoption of regulations be encouraged in the context of a proposal of the most stringent control requirements rather than subsequent variances which would necessarily involve SIP revisions.

Ideally, as indicated in your memorandum, there would be no need for 9106 because both general and exceptional sources would be addressed in the regulatory development process, i.e., the State would propose regulations containing the presumptive absolute emission limits. Subject sources who deemed themselves exceptional for one reason or another could present alternative controls as part of the public involvement process. The State could then evaluate the alternative strategy and adopt perhaps a general regulation and several source specific regulations, presenting the resulting emission limit mix to EPA for approval in connection with the general SIP revision requirement. In this way, the Administrator would have a total strategy to evaluate rather than a series of disjointed SIP revisions requiring individual evaluation, notice and approval/disapproval.

cc: Robert Duprey, Director, AHMD, Region V
John Calcagni, APB, Region V
Michael James, Office of General Counsel
B. J. Steigerwald, Regional Programs Office, RTP