

August 17, 2000

Pamela J. Smith  
Information Transfer and Program Integration Division (MD-12)  
Office of Air Quality Planning and Standards  
U.S. Environmental Protection Agency  
Research Triangle Park, North Carolina 27711

Dear Ms. Smith:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), thank you for the opportunity to comment on EPA's July 12, 2000 draft guidance on the *Use of Emission Reductions from Motor Vehicles Operated on Low-Sulfur Gasoline as New Source Review (NSR) Offsets for Tier 2/Gasoline Sulfur Recovery Projects in Nonattainment Areas* (65 FR 43009). Specifically, the guidance is designed to allow use of Tier 2 motor vehicle emission reductions as NSR offsets for refineries applying for major NSR permits.

STAPPA and ALAPCO were among the most ardent proponents of the national Tier 2/low-sulfur gasoline rule because we believed that emission reductions were needed across the country, and that a combined national fuel and national motor vehicle standard was essential to achieve emission reductions in an effective, equitable and cost-effective manner. We continue to hold those beliefs and, as we have over the past eight months, to applaud EPA for its promulgation last December of this valuable rule. However, while we commend EPA for moving forward to implement the low-sulfur gasoline program in a timely manner, we object to the NSR offset plan the agency seeks to establish in its recently drafted guidance. The following comments explain our concerns.

The stated need for this guidance is to provide NO<sub>x</sub> offsets for refineries that are being modified to produce cleaner fuel. However, there has been no demonstration that any extraordinary efforts will be needed for refineries to comply with current NSR procedures. Further, allowing the NO<sub>x</sub> reductions that will be achieved by the rule to be declared "surplus" will seriously undercut the overall effectiveness of this control program.

STAPPA and ALAPCO acknowledge that the timely issuance by state and local agencies of NSR permits to petroleum refineries so that the modifications necessary to produce low-sulfur gasoline can be made is a concern to some. While we do not expect the issuance of permits to disrupt implementation of this important federal program, we will make the issuance of permits to ensure the timely availability of fuel a top priority. Moreover, we support means, such as model permits, increased technical assistance and stakeholder processes, among others, to facilitate permitting, and are committed to working with all affected parties to expedite the

processing and issuance of permits so that the program will take effect in the time frame envisioned and the country can reap the clean air benefits as scheduled.

We oppose, however, the approach taken in the draft guidance for NSR offsets, wherein any or all of the NO<sub>x</sub> emission reductions to be derived from the Tier 2/low-sulfur gasoline program may be declared as “surplus.” In addition, we are deeply concerned about the precedent that such guidance would set with respect to future national rules.

STAPPA and ALAPCO believe that the emission reductions from low-sulfur gasoline are required by the Clean Air Act and legally may not be used as offsets. Congress clearly directed the Administrator to complete the Tier 2 study, and to promulgate new emission standards if they were found to be necessary to attain and maintain the NAAQS for ozone, which they were. Low-sulfur gasoline was required under the provision of the Clean Air Act stipulating that a fuel or fuel additive not interfere with approved pollution control equipment for motor vehicles. This was not a discretionary action on the part of the Administrator.

Further, we find it surprising that EPA would consider sacrificing any of the emission reductions to result from the Tier 2/low-sulfur gasoline program. Throughout the rulemaking process, state and local air quality agencies were among the many who repeatedly articulated the overwhelming national air quality need for this program. As a nation, we are depending on this rule, and the air quality benefits it will yield, to bring us closer to our clean air goals. We are therefore, not only troubled, but also perplexed, that EPA would contemplate forfeiting any of these benefits and, at the same time, set a precedent that could seriously undermine the effectiveness of future federal air quality programs and state and local air agencies’ ability to achieve and maintain clean, healthful air.

Finally, we are concerned that the draft guidance seriously weakens the air quality protections of the NSR provisions of the Clean Air Act. The NSR provisions are intended to reduce air pollution in areas that are the most polluted. For this reason, offsets are required to assure that pollution is reduced when a major new source or a major modification of an existing source increases pollution in an area that is not attaining a National Ambient Air Quality Standard (NAAQS). The proposal to allow a refiner to “use” the NO<sub>x</sub> reductions from low-sulfur gasoline as offsets to increase NO<sub>x</sub> at its facilities is contrary to both the provisions of the NSR program and to the identified need for the Tier 2/low-sulfur gasoline rule. We believe that such a proposal could discourage refineries from seeking on-site offsets, resulting in emission increases at refineries that will have a disproportionate, negative impact on refinery communities. Moreover, we are disturbed by the fact that, under the draft guidance, use of Tier 2/low-sulfur gasoline benefits as NSR offsets is open to any major industrial source for any major construction or modification. The associations find no compelling reason to compromise the public health and weaken the NSR provisions in this manner.

STAPPA and ALAPCO are committed to working with EPA and the refineries in our jurisdictions to successfully implement the Tier 2/low-sulfur gasoline rule, and to appropriately address any potential permitting or NSR issues as they arise. However, in the interest of achieving the improved air quality standards that the Tier 2/low-sulfur gasoline regulations will afford, we believe it is vital that the agency refrain from issuing this guidance in its current form.

If you have any further questions or desire additional information, please contact either of us or S. William Becker of STAPPA and ALAPCO.

Sincerely,

Robert Hodanbosi  
STAPPA Chair  
Permitting Committee

Wendy Barrott  
ALAPCO Chair  
Permitting Committee

cc: Robert Perciasepe, (EPA OAR)  
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