South Coast
Air Quality Management District
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*Office of the Executive Officer*
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December 15, 2009

***Via Overnight Delivery and Electronic Mail***
Lisa P. Jackson, Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, D.C. 20460

Re: *NRDC, et al., Petition to EPA to Require California to Amend its SIP Before Issuing Permits, dated December 10, 2009*

Dear Administrator Jackson:

I am writing on behalf of the South Coast Air Quality Management District (District), the local agency primarily responsible for clean air planning in the four-county metropolitan Los Angeles region. The District represents over 16 million people (about 5% of the population of the United States), and encompasses over half of the world's 10th largest economy. I am writing to urge you not to act precipitously on a Petition recently submitted to the Environmental Protection Agency by several environmental organizations, asking EPA to issue a "statement" asserting that California must amend its State Implementation Plan (SIP) before the District can implement key portions of two bills recently adopted by the California Legislature and signed into law by Governor Schwarzenegger.[1] The two bills are SB 827 (Wright, 2009) and AB 1318 (Perez, 2009). Also, I am requesting that you allow the District a reasonable opportunity to participate in proceedings involving the Petition.

[1] The document, dated December 10, 2009, is styled "Petition to EPA to Require California to Follow Mandatory Procedures for Amending a SIP, and Secure EPA Approval of An Amended SIP, Prior to Relying on Any Offsets Generated Pursuant to a New Rule." The petitioners are Coalition for a Safe Environment, Natural Resources Defense Council, California Communities Against Toxics, and Desert Citizens Against Toxics.

The significance of the action NRDC urges you to take cannot be overstated. As the result of a state court decision, the District has been under a permit moratorium for over a year. Over 1200 permits to construct are on hold, delaying up to $10 billion of investment in new projects in Southern California. Tens of thousands of jobs have been lost or new hiring delayed, at a time that the region is experiencing the worst economic conditions of the past 50 years. The Governor and State Legislature have acted to allow the moratorium to be lifted as of January 1, 2010. NRDC, defeated in the State Legislature, now asks you to take an action that would delay the Legislature's thoughtful efforts to resolve this crisis, most likely by many months.

The 1200 permits on hold are the type the District routinely issues every year. They include some projects related to President Obama's federal stimulus program. They also include essential public services, such as schools, hospitals, sewage treatment plants, landfills, police and fire stations and environmentally beneficial projects such as equipment replacement with more modern and cleaner equipment. All these projects are installed with equipment meeting the lowest achievable emissions rate. In short, petitioners are seeking to derail a program that improves air quality while allowing for responsible growth and development.

NRDC argues that EPA would be "unreasonably delaying" if it did not respond to the Petition prior to January 1, 2010. Quite to the contrary, it is NRDC and the other groups that have unreasonably delayed in sending you their petition, evidently in a deliberate attempt to place EPA in a difficult position and to force you into a precipitous response. As you will note from "Exhibit C" to the Petition (District web posting dated October 12, 2009), NRDC has known for more than two months that the District plans to issue the stalled permits beginning January 1. Yet they have waited until the last minute to demand that EPA take immediate action, arguing that it would be *EPA* that is unreasonably delaying. Such tactics should not be rewarded.

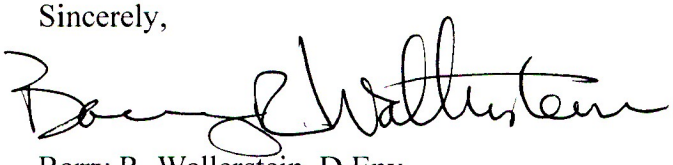
Also, there is no basis for petitioners' assertion that a decision must be made within their deadline to avoid violating 5 U.S.C. Section 555(b). The first stage of judicial inquiry into a claim of unreasonable delay under 5 U.S.C. Section 555(b) is to consider whether the agency's delay is so "egregious" as to warrant mandamus. *Telecommunications Research and Action Center v. Federal Communications Center*, 752 F.2d 70, 79 (D.C. Cir. 1984). In that case, the court identified a number of factors relevant to deciding unreasonable delay, and said that "the time agencies take to make decisions must be governed by a 'rule of reason....'" *Id.* at 80.

The importance of your decision to the District's regulatory program and to the region's economy precludes any finding that a delay beyond the petitioners' 21 day deadline is "egregious" or inconsistent with a rule of reason. In fact, it would be egregious and unreasonable for EPA to rush to judgment without allowing a full and fair opportunity for the District to respond to the Petition. For this reason, I am requesting that EPA allow the District a reasonable opportunity to participate in proceedings involving the petition. We have full responses to each of the arguments raised in the petition. As a first step, I request

that EPA develop an appropriate timeline for responding to the Petition that takes due recognition of the complexity of the issues and also of their importance.

Thank you for your consideration of this critical item.

Sincerely,



Barry R. Wallerstein, D.Env.
Executive Officer

cc: Laura Yoshii, Acting Regional Administrator, EPA Region IX
Deborah Jordan, Air Division Director, EPA Region IX