San Joaquin Valley
AIR POLLUTION CONTROL DISTRICT

HEALTHY AIR LIVING™

March 6, 2013

Rafael DeLeon, Director
EPA, Office of the Administrator
Office of Civil Rights
Mail Code 1201A
1200 Pennsylvania Ave., N.W.
Room ARN 2450
Washington, D.C. 20460

Re: Comments on EPA's Draft Policy Entitled *Title VI of the Civil Rights Act of 1964: Adversity and Compliance with Environmental Health-Based Thresholds*

Dear Mr. DeLeon:

The San Joaquin Valley Unified Air Pollution Control District ("District") submits the following comments on EPA's above-entitled draft Title VI policy. The District is the primary regulatory authority for stationary sources of air pollution in California's San Joaquin Valley ("SJV") under the federal and California Clean Air Acts. Accordingly, the District is the permitting agency for well over 15,000 stationary sources of air pollution in the SJV.

Due to Valley's unique geography and meteorology, no other region in California faces the enormous degree of difficulty that the SJV faces in meeting the ambient air quality standards for ozone and particulates. Surrounding mountains, stagnant weather patterns, hot summers, and foggy winters make the formation of air pollution in the SJV inevitable and prevent air pollutants from dispersing.

As a result, the SJV has one of the most mature regulatory programs in the nation and the most stringent stationary source regulations. Accordingly, the District requires stationary sources to obtain pre-construction permits for any emission source with the potential to emit two (2) pounds per day of pollution, or less than 1 ton of pollution per year. It also requires each such source to employ the best available control technology ("BACT"). As part of the engineering analysis conducted during the permitting process, the District also prepares an ambient air quality analysis ("AAQA"), which ensures that pollution associated with a permitted source does not exceed an ambient air quality standard or that a current exceedance is not made worse, and a comprehensive health risk assessment ("HRA"), which employs the extremely conservative methodology established by the California Office of Environmental Health Hazard Assessment.

Seyed Sadredin
Executive Director/Air Pollution Control Officer

Northern Region
4800 Enterprise Way
Modesto, CA 95356-8718
Tel: (209) 557-6400 FAX: (209) 557-6475

Central Region (Main Office)
1990 E. Gettysburg Avenue
Fresno, CA 93726-0244
Tel: (559) 230-6000 FAX: (559) 230-6061

Southern Region
34946 Flyover Court
Bakersfield, CA 93308-9725
Tel: 661-392-5500 FAX: 661-392-5585

www.valleyair.org www.healthyairliving.com

Given the nature of the above-analyses, the District strongly disagrees with EPA's proposal to depart from its long-established presumption that no adverse impacts are caused for purposes of Title VI of the Civil Rights Act where a permit is issued in compliance with environmental health-based standards.

EPA's statement in its Draft Title VI Policy that sensitive populations, hot spots or cumulative impacts may not have been considered in the establishment of a health-based standard is simply untrue.

For instance, when EPA establishes a national ambient air quality standard ("NAAQS") pursuant to Clean Air Act section 109, 42 U.S.C. § 7409, it is required to set the standard with "an adequate margin of safety." Under EPA's own policies, in establishing an adequate margin of safety, EPA must consider *sensitive populations*, the nature and severity of health effects involved and the kind and degree of uncertainties at issue when it sets national ambient air quality standards ("NAAQS").[1] Indeed, by EPA's own admission, the legislative history for Clean Air Act section 109 requires EPA to set the NAAQS based on sensitive populations.

It follows that EPA's proposal to presume that sensitive populations may still be adversely impacted by emissions that do not exceed a respective NAAQS is contrary to EPA's own mandate in establishing the NAAQS in the first place. If complying with a NAAQS is not a presumed protection of a specific population's health, EPA should not have established the NAAQS at that level. Further, if additional scientific evidence has been established since the NAAQS was developed, EPA is obligated to review and act on that science during its regular review of each NAQQS, and to update the NAAQS according to its analysis. Removing the presumption of health protection provided by complying with the NAAQS thrusts local permitting agencies into the unenviable and ultimately unmanageable role of second-guessing EPA's actions in establishing the NAAQS in question, and of examining all the scientific evidence that has been developed since the date of the establishment of the NAQQS. This proposed duplication of efforts is clearly contrary to all concepts of efficient government. More importantly, such an effort is simply an unreasonable expectation to place on permitting agencies. There are few, if any, permitting agencies that have the resources and wherewithal to perform such an analysis.

Furthermore, other additional environmental health-based thresholds that the District employs during its permitting process are similarly established based on conservative assumptions, including protecting sensitive populations and the consideration of hot spots and cumulative impacts. For instance, the HRA that the District conducts during its permitting process analyzes the maximum

---

[1] *See* EPA's *Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter* dated March 2008 at page 4. Available at: http://www.epa.gov/ttnnaaqs/standards/pm/data/2008_03_final_integrated_review_plan.pdf (visited March 6, 2013).

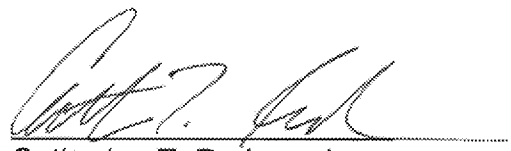
potential human health risk that air pollution from a proposed permit project could have, given a set of very conservative, worst case assumptions. The California Governor's Office of Environmental Health and Hazard Assessment ("OEHHA") methodology that the District employs for its assessment is a widely accepted standard for performing such assessments and includes the analysis of the "potency, toxicity, quantity of emissions, and proximity to sensitive receptors" as well as hot spot and cumulative impact analyses.[2]

The outcome of this analysis is an extremely conservative assessment of a short-term acute hazard index, a longer term chronic hazard index and the maximum individual cancer risk for a project. Only if the acute and chronic indices are below 1.0 and the maximum individual cancer risk is below 10 per one million people, is the project is deemed to have no significant risk to human health. The District will not issue a permit for a project that exceeds these conservative risk thresholds. Because these thresholds are established based on sensitive receptors, hot spot and cumulative impact analyses, EPA's concern that such issues may not have been considered during the establishment of the thresholds simply does not exist.

Accordingly, at least in the SJV where the regulatory and permitting framework are rigorous and based on standards that are conservatively established based on sensitive populations, hot spots and cumulative impacts, EPA should maintain the presumption that no adverse impacts are caused by permits issued in compliance with such environmental health-based thresholds. To abandon the presumption in the face of facts and circumstances as outlined above is nonsensical and will result in lengthy, resource-intensive and redundant Title VI analyses that will not reveal any otherwise unidentified adverse impacts, even for sensitive populations.

Thank you for this opportunity to comment on the draft Title VI policy. Please feel free to contact me at (559) 230-6033 should you have any questions concerning the above comments.

Sincerely,



Catherine T. Redmond,
District Counsel

---

[2] *See* OEHHA *Air Toxics Hot Spots Program Risk Assessment Guidelines: The Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments* dated August 2003 at pages 1-3 (sensitive populations) and 4-1 (hot spot and cumulative impacts). Available at: http://oehha.ca.gov/air/hot_spots/pdf/HRAfinalnoapp.pdf (visited March 6, 2013).