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June 16, 2016

Heather McTeer Toney
Regional Administrator
USEPA Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

Subject: Revision to North Carolina's Clean Air Act Section 110(a)(2)(D)(i)(I) "Good Neighbor" State Implementation Plan for the 2010 1-Hour Sulfur Dioxide Standard

Dear Ms. Toney:

I am pleased to submit this certification demonstrating that the North Carolina Department of Environmental Quality, Division of Air Quality (DAQ) has met the requirements of the Clean Air Act Section 110(a)(2)(D)(i)(I) for the 2010 1-hour sulfur dioxide (SO₂) primary National Ambient Air Quality Standard (NAAQS). This submittal serves as a revision to North Carolina's final certification submitted to the U.S. Environmental Protection Agency (EPA) on August 23, 2013, demonstrating compliance with Clean Air Act Section 110(a)(1) and (2) infrastructure State Implementation Plan (SIP) requirements for the 1-hour SO₂ primary NAAQS. Attachment 1 contains the public notice and the EPA's comment letter. An exact duplicate electronic copy is being provided on a compact disk.

The North Carolina General Statutes identified in this certification are cited as reference material only, and should not be adopted as part of North Carolina's SIP. The DAQ believes that legal documents and statutes are not required to be adopted into the SIP based upon the EPA Federal Register (FR) notice on May 19, 2010 regarding California's legal authority (75 FR 27938). In this final rule, the EPA states, "We also noted that the actual statutory provisions and other legal documents relied upon to support a State's assurance of adequate legal authority need not be approved into the SIP under CAA section 110 or [USEPA's] SIP regulations under 40 [Code of Federal Regulation] part 51 (although such provisions are required to be submitted with the plan). Thus, [USEPA] could approve, consistent with CAA and [USEPA] requirements, and did so in this instance, wholesale revisions to the original legal authority chapter without also approving the actual statutory provisions and other legal documents cited there."

The DAQ issued a public notice announcement on May 6, 2016, in accordance with 40 CFR 51.102, indicating that the "*Revision to North Carolina's Clean Air Act Section 110(a)(2)(D)(i)(I) "Good Neighbor" State Implementation Plan for the 2010 1-Hour Sulfur Dioxide Standard*" was available for public comment and posted on the DAQ website for review. The public notice announcement indicated that anyone may request a public hearing.

In addition to posting on the DAQ website, the public notice announcement was sent to a number of e-mail distribution lists managed by the DAQ that includes numerous stakeholders from industry and environmental groups. The DAQ believes that sending the public notice announcement to these groups is more effective than publishing the notice in a few local newspapers and is consistent with the requirements described in the April 6, 2011, memorandum, *“Regional Consistency for the Administrative Requirements of the State Implementation Plan Submittals and the Use of Letter Notices.”*

Additionally, the Rich Site Summary (RSS) feed on the DAQ website offers regular delivery to persons interested in receiving updates to the website content. The document was also made available for review during normal business hours at the DAQ Central Office in Raleigh and each of the DAQ’s seven Regional Offices.

The public comment period was open from May 6, 2016 through June 6, 2016. The DAQ did not receive any requests for a public hearing or any comments from the public. The EPA submitted the following comment:

“The EPA notes that existing available 110(a)(1) and (2) infrastructure guidance does not explicitly address the CAA section 110(a)(2)(D)(i)(I) "Good Neighbor" (prongs 1 and 2) provisions with respect to the 2010 1-hour SO₂ NAAQS. Considering the source-specific nature of the 2010 1-hour SO₂ NAAQS and the court-ordered consent decree requiring the EPA to complete remaining designations throughout the country (i.e. characterization of SO₂ emitting sources), the EPA is still in the process of developing policy and guidance to support air agencies with their obligation to address the provisions of the Good Neighbor provision under the CAA with respect to the 2010 1-hour SO₂ NAAQS. The EPA notes that any potential guidance and/or technical analysis released subsequent to the air agency submitting to the EPA a Good Neighbor SIP may require a supplement to the SIP submission to fully address the requirements.”

As you know, on April 29, 2014, in its decision on EPA v. EME Homer City Generation, the U.S. Supreme Court clarified CAA Section 110(a)(2)(D)(i)(I) and held that despite the lack of EPA guidance, states are required to meet their good neighbor requirements in a timely manner.¹ Thus, by this submittal we are fulfilling our obligation to comply with CAA Section 110(a)(2)(D)(i)(I) which we are required to do under the law. Considering the current SO₂ monitoring data within North Carolina and neighboring states, downward trend in statewide SO₂ emissions, and the DAQ’s success in the on-going implementation of the Data Requirements Rule for the 2010 1-hour SO₂ primary NAAQS,² we are concluding through this demonstration that North Carolina does not significantly contribute to 1-hour SO₂ issues in downwind states. This in large part is due to the significant strides North Carolina has achieved in reducing its SO₂ emissions over the past several years.

¹ EPA v. EME Homer City Generation, L.P. 134 S.Ct 1584, 1600-01 (2014).

² "Data Requirements Rule for the 2010 1-Hour Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard (NAAQS)," 80 *Federal Register* 51052, August 21, 2015.

Based on EPA's guidance contained in the January 22, 2015 memorandum, states shown to not contribute significantly to downwind air quality problems have no emission reduction obligation under the Good Neighbor Provision.³ The DAQ concludes that North Carolina has met its Section 110(a)(2)(D)(i)(I) Good Neighbor of Section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO₂ primary NAAQS using the best science and information available to date. I believe that this SIP submittal is far more comprehensive and addresses critical transport issues not covered by other State SIP submittals. I request that the EPA not delay its approval of this SIP revision submittal because of the EPA's failure to issue timely guidance to support air agencies with their obligation to address the provisions of the Good Neighbor provision.

If you should have any questions regarding this submittal, please contact Randy Strait of my staff at (919) 707-8721.

Sincerely,



Sheila C. Holman, Director
Division of Air Quality, NCDEQ

SCH/rps

cc: Michael Abraczinskas, NCDAQ
Sushma Masemore, NCDAQ
Randy Strait, NCDAQ
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Lynorae Benjamin, USEPA
William Barnette, Forsyth County Office of Environmental Assistance and Protection
Leslie Rhodes, Mecklenburg County Air Quality
David Brigman, Western Regional Air Quality Agency

³ USEPA January 22, 2015 memorandum, "Information on the Interstate Transport "Good Neighbor" Provision for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I).

