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Received

JUN 23 2008

Permits Srvc
SJVAPCD

CORPORATE HEADQUARTERS

June 17, 2008

SENT VIA CERTIFIED MAIL #7007 1490 0002 0836 6128
RETURN RECEIPT REQUESTED

Dave Warner, Director of Permit Services
San Joaquin Valley Air Pollution Control District
1990 E Gettysburg Ave.
Fresno, CA 93726

Jon Adams

RE: Comments on Draft Inspection of Equipment Breakdowns

Dear Mr. Warner:

Please find below comments on the draft Inspection of Equipment Breakdowns which are provided on behalf of the J.R. Simplot Company (Simplot). Simplot is a privately held agribusiness corporation based in Boise, Idaho. Simplot has a number of operations in the San Joaquin Valley engaged in fertilizer manufacturing, distribution and sales.

Section	Statement	Comment
II.A	<i>Incidents involving any of the following characteristics shall be inspected as a priority...</i>	In order to quickly respond to a breakdown, facilities may find it necessary to perform repair work before the inspector arrives to review and photograph the breakdown condition. In some situations, there may be nothing to photograph. A weekend repair where the affected part has been re-insulated may be an example of this type of situation. Please clarify that the agency's need to observe and photograph should not interfere with the facilities ability to quickly make repairs, minimize excess emissions, and avoid unnecessary plant downtime.
III.B.5	<i>Request that the failed equipment parts be identified and photographed....</i>	Some photographs may contain proprietary information. We suggest that the inspector be instructed to allow the facility to make a claim of confidentiality for any proprietary information photographed. In addition, the policy should remind the inspector to treat all proprietary information accordingly.

Section	Statement	Comment
III.B. 9	<i>...Request that the representative determine what the manufacturer recommends for routine maintenance...</i>	Manufacturers recommend maintenance to a variety of customers when their equipment can be utilized for a variety of purposes. In some instances, facility experience may be a better indicator. Relying solely on manufacturer recommendations for the purpose of determining whether a facility qualifies for relief under District Rule 1100 is not always appropriate. The inspector should consider facility knowledge in addition to manufacturer recommendations.
III.B.10	<i>...manufacturer's recommended replacement rate...</i>	SJVAPCD should also look to knowledge within the facility. See comment III.B.9 above.
IV.A.3.f	<i>Recurrent is defined as breakdown of a component that has had three breakdown events within the last three years.</i>	Recurrent is not defined in Rule 1100. Request the District provide the basis and justification for the new defined definition of recurrent.
IV.A.4.	<i>Steps must be taken to avoid future occurrences or breakdown relief may not be granted.</i>	Rule 1100 does not make this distinction. Rule 1100 9.0 states: <i>Any failure to comply, or comply in a timely manner, with the reporting requirements established in Sections 6.1, and 7.1 through 7.5 of this rule shall constitute a separate violation of this rule.</i> It appears Rule 1100 allows for the breakdown relief, but handles the lack of corrective measures separately.
IV.A.5	<i>Verify that photos of defective equipment are attached....</i>	See 1 st comment above.
Appendix A	Deny Relief for, but not limited to, the following: ...8. <i>Failure to replace part according to the manufacturer's recommended lifespan.</i>	As mentioned in the 2 nd comment, consideration of facility knowledge and equipment history should be included in the determination.
Appendix A	Grant relief regardless of recurrence 1. <i>Utility Power Outages.</i>	This relief should be extended to other types of utility outages beyond the control of the facility, such as, properly operating phone lines. Facilities are not notified when other customer lines are not operating properly, such as phone lines used for polling CEMs. In addition, the phone company is under no obligation to respond to pressure from a facility regarding a phone line that belongs to another entity.

Lastly, the Compliance Department Memorandum on Rule 1100 – Appears to narrowly define and modify how Rule 1100 is applied. However, a “policy” or “guidelines” are not an enforceable regulation that has been adopted according to the rule-making provisions of the Administrative Procedure Act (“APA”). Moreover, the APA specifically prohibits any state agency from making any use of a state agency rule which is a “regulation” as defined in Government Code section 11342.600 that should have, but has not been adopted pursuant to the APA. California Government Code Section 11340.5 states:

(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

It appears that some of the items listed in "policy and procedure" are setting new standards related to equipment breakdowns and therefore should be handled under a rule making. Simplot recommends that the items in this policy that effect the interpretation of Rule 1100 should be handled in a rule making process updating Rule 1100 and not in a policy and procedure for inspections.

Thank you very much for this opportunity to comment on the draft policy for Inspection of Equipment Breakdown. If you would like to discuss any of our comments, please feel free to contact me at 208.389.7558.

Sincerely,

A handwritten signature in cursive script that reads "Chelly Reesman".

Chelly Reesman
Air Quality Engineer

cc: Alan Prouty, J.R. Simplot Company