



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

APR 24 2009

OFFICE OF  
AIR AND RADIATION

Ms. Anne Milgram  
Attorney General  
State of New Jersey  
Richard J. Hughes Justice Complex  
25 Market Street  
Post Office Box 093  
Trenton, New Jersey 08625

Dear Ms. Milgram:

This letter is in response to your letter of March 11, 2009, in which you reiterate New Jersey's February 15, 2008, Petition for Reconsideration and request for a stay related to the U.S. Environmental Protection Agency's (EPA) final rule entitled "Prevention of Significant Deterioration and Nonattainment New Source Review: Reasonable Possibility in Recordkeeping," which was published in the *Federal Register* on December 21, 2007 (72 FR 72607); and in effect requests that EPA reconsider its denial of that petition by letter dated January 14, 2009.

Under Clean Air Act (CAA) §307(d)(7)(B), EPA must convene a proceeding for reconsideration if an objection is of central relevance to the outcome of the rule and the grounds for the objection arose after the period of public comment or the objection was impracticable to raise during the period of public comment. In addition, EPA retains discretion to conduct a reconsideration under other circumstances. In the petition and the March 11, 2009 letter, New Jersey alleges that the objections raised in the petition arose after the period for public comment and are of central relevance to the outcome of the rule. New Jersey alleges that EPA failed to solicit comment on the component of the final rule that required pre-change but not post-change requirements for recordkeeping. New Jersey also alleges that the failure to require post-change recordkeeping renders this component unenforceable. New Jersey also alleges that the final rule as a whole is unenforceable and fails to respond to the June 24, 2005 Court's remand.

In our January 14, 2009 letter, we denied your petition on the grounds that the allegedly new issues were actually a logical outgrowth from the proposal, and that the remaining issues raised had all been raised for comment during the course of the rulemaking. However, after further review of the issues raised and the rulemaking record, we believe that additional public comment is warranted. Accordingly, with this letter we are granting the petition, and intend shortly to publish a *Federal Register* notice describing in detail our request for public comment.

Following that, we will determine whether any changes to the existing regulatory provisions are appropriate. As to your request for a stay of the effectiveness of the rule, EPA has decided not to stay the rule while reconsideration is underway because we believe that the standard in the current rule is preferable to the prior standard which was vacated by the Court as too vague. As such, we are denying your request for a stay.

We appreciate your comments and interest in this important matter.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Craig". The signature is written in black ink and is positioned above the printed name and title.

Elizabeth Craig  
Acting Assistant Administrator