

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-5837-3]

**Air Pollution Control; Proposed Action on Clean Air Act Grant to the Bay Area Air Quality Management District****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed determination with request for comments and notice of opportunity for public hearing.

**SUMMARY:** The EPA has made two proposed determinations that reductions in expenditures of non-Federal funds for the Bay Area Air Quality Management District (BAAQMD) in San Francisco, California are a result of non-selective reductions in expenditures. These determinations, when final, will permit the BAAQMD to keep the financial assistance awarded to it by EPA for FY-96 and to be awarded financial assistance for FY-97 by EPA under section 105(c) of the Clean Air Act (CAA).

**DATES:** Comments and/or requests for a public hearing must be received by EPA at the address stated below by July 7, 1997.

**ADDRESSES:** All comments and/or requests for a public hearing should be mailed to: Valerie Cooper, Grants and Program Integration Office AIR-8, Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901; FAX (415) 744-1076.

**FOR FURTHER INFORMATION CONTACT:** Valerie Cooper, Grants and Program Integration Office AIR-8, Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901 at (415) 744-1237.

**SUPPLEMENTARY INFORMATION:** Under the authority of Section 105 of the CAA, EPA provides financial assistance to the BAAQMD, whose jurisdiction includes Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, and part of Solano and Sonoma Counties in California, to aid in the operation of its air pollution control programs. In FY-95, EPA awarded the BAAQMD \$1,320,885 which represented approximately 5% of the BAAQMD's budget, and in FY-96 \$1,768,617 which represented approximately 7% of the BAAQMD's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that "[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air

pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year." EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, "after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government." CAA Section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In its FY-96 section 105 application, which EPA reviewed in August 1995, the BAAQMD projected expenditures of non-Federal funds for recurrent expenditures (or its maintenance of effort (MOE)) of \$24,778,132 which included fees collected by BAAQMD for permits it issues under Title V of the CAA.<sup>1</sup> In January of 1997, however, the BAAQMD submitted to EPA documentation which shows that its actual FY-96 MOE was \$23,273,665, which is exclusive of Title V. This amount represents a shortfall of \$489,518 from the MOE of the preceding fiscal year. In addition, the projected FY-97 MOE of \$21,555,635 represents a shortfall of \$1,718,030 from the FY-96 MOE of \$23,273,665. In order for the BAAQMD to be eligible to keep its FY-96 grant and to be awarded an FY-97 grant, EPA must make a determination under section 105(c)(2).

In FY-96, the BAAQMD determined that its MOE would decrease because revenues from property taxes and permit fees decreased. For FY-97 the BAAQMD once again determined that there would be continued reductions in these revenue sources and, in addition, the State of California Retirement System (PERS) mandated that the District use the credit in their account in lieu of payment to PERS. Therefore, the usual contribution to PERS for 105 programs (which is a "recurrent expenditure") was not made and could not be counted towards the MOE. The reductions resulted in the loss of 12.5 full time permanent positions. In addition to the reduction in revenues, a general reserve and fund balance account were no longer available

<sup>1</sup> A CAA section 105 grantee's MOE may be reduced to reflect the transfer of activities to an EPA approved Title V program previously funded through section 105 grants. See 60 FR 366, 368 (January 4, 1995) and 40 CFR 35.205(b).

(because they had been depleted) to make up for shortages as they had in previous years. These were the contributing factors to a reduction in BAAQMD's FY-96 and FY-97 MOE level.

The BAAQMD's MOE reductions resulted from a loss of revenue from property taxes and permit fees. This loss of revenue and MOE reduction resulted from circumstances beyond the District's control. EPA proposes to determine that the BAAQMD's lower FY-96 and FY-97 MOE level meets the section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR 35.210, this determination will allow the BAAQMD to keep the funds received from EPA for FY-96 and to be eligible for an FY-97 award.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by July 7, 1997 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by July 7, 1997. If no written request for a hearing is received, EPA will proceed to a final determination.

Dated: May 21, 1997.

**David P. Howekamp,**  
Director, Air Division.

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**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-5837-4]

**Proposed Settlement; Industrial and Commercial Waste Incineration Rulemaking; Deadline Litigation****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of proposed settlement; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed partial settlement of *Sierra Club v. Browner*, No. 97-CV00675 (D.C. Cir.).

The case was brought by Sierra Club, which seeks to compel defendant Carol Browner, EPA Administrator, to take two actions mandated by the Clean Air Act ("the Act"). The first count seeks to compel Defendant to transmit to Congress the report specified in section 112(f)(1) of the Act. The second count seeks to compel Defendant to promulgate regulations for solid waste