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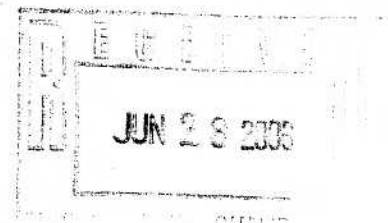
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Commonwealth of PA
Environmental Quality Board
16th Floor
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17105-8477

INDEPENDENT REGULATORY
REVIEW COMMISSION



RE: COMMENTS REGARDING NONATTAINMENT NEW SOURCE REVIEW (NSR)

Pennsylvania now has a chance to improve the NSR regulations, and improve (or at least maintain) the business climate in Pennsylvania without sacrificing air quality. However, in most key areas, the Department has elected to be more stringent than federal requirements without any apparent justification. The preamble to the regulation states that the Board has determined that more stringent requirements are necessary to achieve ambient air quality standards. Please provide the review (for the record) and any modeling or other technical support for the increased stringency required by the Board.

The Department's Proposed NSR regulations would strip out many of the flexibility provisions found in the federal regulations. We believe the NSR regulations as proposed will further stifle the competitiveness of Pennsylvania industries, limit its ability to respond quickly to market changes and generally guarantee that new facilities and expansions will occur in other states. We request that the Board seriously consider the significant issues raised below and consider eliminating many of the numerous variations from the Federal NSR program. There may be areas in which Pennsylvania must differ from the federal program, but they should be kept to a minimum and should be justified by technical support and backed up with sound scientific data.

Please consider the following specific comments:

- Baseline for Actual Emissions. The Department should use the ten year "look-back" consistent with the Federal NSR regulations rather than proposing a five year look-back. The purpose of the baseline determination is to arrive at a representative period from which to determine existing actual emissions. The purpose is not to try to ensnare as many projects as possible into the NSR program. For many businesses, the downturn in a business cycle or demand for a particular product lasts longer than three years. Additionally manufacturing plants may have lengthy periodic planned maintenance shutdowns that can exasperate this business cycle downturn. In that event, "normal" operations may not have occurred during a consecutive two year period in the past five years. Moreover, some products or production units have been out of operation for a number of years due to economic or market conditions and are now restarting production. Without the ten year look-back, a facility will not be able to select a period representative of "normal" operations. DEP's preamble states that a ten year look-back period decreases the possibility that NSR would apply. Stated another way, a five year look-back period increases the possibility that NSR will apply to emissions that otherwise would have been emitted under normal circumstances during that time frame. This proposal is not consistent with a business friendly state and will stifle expansion, improvement, and the competitiveness of the businesses within the Commonwealth.

Consistent with the Federal NSR program, DEP should allow the use of a different two year period to determine the baseline emissions for each emission unit and each pollutant affected by a project. By requiring an entire facility to use the same two year period, most facilities are penalized. Emissions of pollutants from different sources are dependent upon differing factors. Production of one product may be down while another is up. Production of these products may emit different pollutants and should not be subject to the same two year period, remembering that the goal is to select representative emissions. Likewise, the Pennsylvania regulations require baseline emissions be based on a two calendar year period, rather than 24 consecutive months as the federal regulations allow. There is no explanation for this variation which once again makes the identification of a representative period more difficult.

- Plant-wide Applicability Limits. PALs provide an excellent opportunity for operational flexibility. However, Pennsylvania's proposed regulations differ so much from the federal regulations that the benefits of a PAL are largely lost. First, as with the baseline determination, the PAL provisions only allow a five year look-back rather than the ten year look back in the federal regulations. For the reasons noted above, the Department should allow for the ten year look-back. Secondly, the requirement that any new sources installed at a facility with a PAL must meet BAT negates considerable operational flexibility with no environmental benefit. The Department should allow facilities with a PAL to operate under the approved cap without mandating specific requirements for new

or modified sources. The Department asserts that it must require BAT for new sources. This is not accurate. Section 6.6(c) of APCA authorizes the Department to mandate BAT for new sources. It does not require that the Department do so. Sources with a PAL should be allowed to operate under the cap without additional restrictions. Third, all the same rules apply to PAL facilities as to other permit holders. These include the need for plan approvals, individual caps on large sources, need to prove data submissions with testing, reporting, etc. In short, Plant-wide Applicability Limitations are not a desirable carrot for industry in Pennsylvania.

- De minimis Emission Aggregation Period. Not only do the Department's proposed regulations reduced the look-back period from ten years to five years, but they have also increased the period during which a source is required to aggregate de minimis emission increases from five years to 15 years. Again, there is no explanation for this three-fold increase in the aggregation period. DEP should maintain the five year aggregation period as it currently appears in the DEP regulations.

The lb/hr and lb/day de minimis aggregation thresholds are burdensome and should be eliminated. EPA does not require de minimis aggregation, let alone on a lb/hr or lb/day basis. Additionally, the lb/day value can be overestimated since some sources would not restrict hours/day and thus calculate a lb/day by using 24 hours. In actuality, a source may not operate the complete 24 hours/day. An emergency generator is a prime example - hours of operation per year will be limited, but hours/day will not be limited so that it can be run in an emergency. Actual run hours per year and per day for an emergency generator typically do not approach the permitted limits, thereby inflating the lb/day threshold.

- PM 2.5 Requirements. The proposed regulations prematurely incorporates PM 2.5 provisions into the regulations. Since EPA has yet to finalize the implementation rule for PM 2.5 and has indicated that the states should use a PM-10 program as a surrogate until those rules are finalized, Pennsylvania should follow that guidance. At present there is no reliable and accepted methodology for measuring PM 2.5 and neither DEP nor EPA has determined the pollutants considered to be PM 2.5 precursors. Including PM 2.5 in these regulations will only add to confusion and inconsistent application of these regulations across the Commonwealth.
- PM-10 Threshold. The Department's regulations proposed to lower the threshold for sources subject to NSR from 100 tons per year to 70 tons per year of PM-10. No justification for this decrease has been provided. The 100 ton per year threshold should be retained.
- New Emission Units. The proposal considers emissions unit as "new" **2 years** from the date the new unit was first operated. According to 127.203a(6)(C) the intention of the 2-year period is to establish the baseline actual emissions. However many new, reconstructed or modified units do not reach normal capacity

until a reasonable shakedown period. Appendix S to Part 51, Emission Offset Interpretative Ruling, Section II(A)(6)(vi) indicates that "Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days". Moreover, shakedown period is included in many plan approvals. The rule should include provisions allowing a shakedown period (with extensions if needed), instead of counting from the time the unit was first operated. To avoid the risk of having new regulations apply to an existing 2 year old unit (actually, more than 2 years may have elapsed from the time a unit is purchased and installed), the rule should clearly indicate that this applies only to the NSR-affected process.

Thank you for the opportunity to provide comments on this very important aspect of doing business in Pennsylvania. We trust that you will help maintain the competitiveness of businesses in the Commonwealth in your decision-making. Please call or write with any questions on the above.

Best Regards,



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