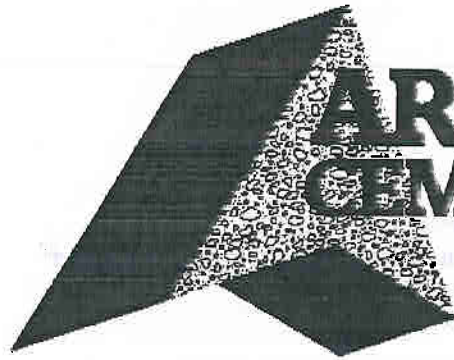


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# ARMSTRONG CEMENT & SUPPLY

JUN 27 2006 AM 9:19  
INDEPENDENT REGULATORY  
COMMISSION

June 27, 2006

*via Electronic Mail*

Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17101-8477

**Re: Comments to EQB's Proposed Rule on  
Nonattainment New Source Review**

Dear EQB Members:

Armstrong Cement & Supply Corp. ("Armstrong Cement") owns and operates a Portland cement plant located in Pennsylvania. The proposed nonattainment new source review ("NSR") rules may have a direct impact on Armstrong Cement. Accordingly, we are taking this opportunity to provide the following comments on the proposed NSR rulemaking that was published in the April 29, 2006 *Pennsylvania Bulletin*.

## **I. General Comments**

- a. *The EQB should simply adopt the federal NSR rules by incorporating them by reference as is the case for PSD.*

Armstrong Cement suggests that the EQB either incorporate the federal NSR rules by reference or adopt state rules to closely track the federal program. Adoption of more stringent rules places Pennsylvania companies at an economic disadvantage relative to competitors out of the state. Section 4.2(b)(1) of the Air Pollution Control Act is intended to ensure that Pennsylvania companies are not placed at such a disadvantage unless the rulemaking is necessary to achieve and maintain the NAAQS. Armstrong Cement has recently participated with the DEP and the Ozone Transport Commission efforts regarding ozone nonattainment issues in the northeast. Certainly the modeling efforts and evaluation of additional control measures on certain identified source categories, including cement kilns, may be necessary to achieve the ozone NAAQS provided the DEP and or EQB makes the appropriate demonstration that any more stringent control measures are necessary to achieve the NAAQS. However, it is unclear and by no means demonstrated that the more stringent NSR rules are necessary to achieve any NAAQS.



A Snyder Associated Company

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Second, the PSD program in Pennsylvania incorporates the federal program by reference. The same approach will work quite easily for NSR. Such an approach reduces regulatory confusion for all parties involved in the air permitting process. In addition, the approval of the NSR SIP revision as well as any subsequent revisions will greatly simplify the SIP approval process for the DEP.

Absent a scientifically supported demonstration regarding the necessity of the admittedly more stringent NSR rules, the EQB should refrain from finalizing such a program that disadvantages Pennsylvania companies with no demonstrated environmental benefit.

## **II. Comments in Response to EQB's Request for Comments**

The EQB specifically requested comments on several specific issues. Armstrong Cement is providing its input on these issues

### *a. Whether the program should specify a 5-year or 10-year look-back*

As previously stated, Armstrong Cement supports the federal approach which provides for a 10-year look-back period for determining baseline actual emissions. The preamble states that "regulated entities . . . may choose any 2 consecutive years in the preceding 5 as their baseline." 36 Pa. Bull. 1991, 1993 (April 29, 2006). To the contrary, the regulatory language requires the use of the 2 consecutive calendar years immediately prior to the application with the caveat that "the Department may allow the use of a different consecutive 2-year period within the last 5 years upon a determination that it is more representative of normal operation." 36 Pa. Bull. 2005 (proposed 25 Pa. Code 127.203a(a)(5)(i)). Armstrong Cement suggests that the EQB adopt the federal 10-year look-back period. However, if the EQB does not adopt the federal approach, the EQB should adopt a 5-year look back with allowance that another 2-year period out of the last 10 years be used if such period is more representative of normal source operations.

### *b. Whether PALs should have a 10-year term, should be fixed or declining, should be based on actual or potential emissions, should be reopened if emission limits change during the 10-year period and the potential enforcement consequences of noncompliance with a PAL.*

As previously stated, Armstrong Cement supports the federal approach (10-year look-back). However, if the EQB deviates from the federal approach, the most common-sense approach to NSR would be to base it on potential to emit ("PTE") as the current rules are. Changes to a facility that do not increase the PTE do not "result in" an emissions increase. This test is easy to understand and easily implemented. Armstrong Cement would support a PAL based on the facility-wide PTE. In such a system, the PAL limit would change if a new emission limit was promulgated that changed the PTE of a source. As indicated with respect to the federal program, noncompliance with a PAL

should implicate NSR and its requirements. However, it should be recognized that a one-time exceedance may be explainable in contrast to continued exceedance of PAL limits.

*c. Whether the severe ozone nonattainment area provisions should be included for the five-county Philadelphia area.*

Armstrong Cement does not operate in the aforementioned area. Accordingly, it is unlikely to be impacted by this issue. To the extent that the EQB and DEP can address the ozone nonattainment issues in the Philadelphia area via specific control measures applied to sources in the area, perhaps this controversial issue need not be addressed in the NSR rulemaking.

*d. Whether permit limits should reflect the physical and legal capability of a source to operate without any modification (that is, demand growth exclusion).*

Armstrong Cement is not entirely clear on the issue being raised. We support the demand growth exclusion as a common-sense interpretation of the term "modification" as a change that "results in" an emissions increase. Armstrong Cement does not believe that permit limits need to be created for every emission source based on the PTE of the source in order to establish a benchmark to measure the demand growth exclusion.

*e. To what extent should the Commonwealth develop an NSR regulation that differs from the Federal requirements?*

Armstrong Cement suggests that Pennsylvania should not develop an NSR regulation that differs from the federal program. While the user-friendly "PTE to PTE" test currently applied in Pennsylvania makes sense, the proposal is to switch to a "baseline actual-to-projected actual" test. If this switch is made, then we suggest that Pennsylvania adopt the federal rules by reference. The rationale for our position is stated in the General Comments. We do not believe there is any rationale that supports a more stringent NSR program. The only basis provided in the preamble to the proposed rule is that a more stringent NSR program is necessary to achieve and maintain the NAAQS. Armstrong Cement believes that the NSR program should not be viewed as a program to achieve reductions or to attain a NAAQS. Other state rulemaking and SIP approval processes are available to the EQB to allow for the attainment of the NAAQS. Accordingly, a more stringent NSR program is not necessary to achieve the NAAQS.

*f. De minimis aggregation with regard to hourly, daily and yearly applicability.*

First, the short-term triggers (100 lb/hr and 1,000 lbs/day thresholds in the definition of "significant" for NO<sub>x</sub> and VOCs) should be deleted. There is no basis or reason to retain these triggers.

Second, the Pennsylvania rules should not provide for aggregation of less than significant emission increases. The proposed NSR rules include a requirement to aggregate projects that do not, in and of themselves, trigger NSR. The federal rules have been consistently interpreted by USEPA as not requiring aggregation of smaller projects and the recently reformed NSR rules codify this policy. We see no reason why Pennsylvania should deviate from the federal policy. The USEPA has indicated that it will be promulgating a rulemaking on aggregation. At the very least, the EQB should await the federal rulemaking before it addresses aggregation.

Finally, the 15- year "contemporaneous" period for aggregating de minimis increases is unnecessary and inappropriate.

*g. The proposed emission limits under the achieved clean coal technology provision.*

Armstrong Cement offers no comment on this issue.

### **III. Comments on the Provisions Identified by the EQB as Being More Stringent than the Federal Program**

As a threshold matter, Armstrong Cement does not believe that any of the more stringent provisions should be promulgated in Pennsylvania. However, in the event that the EQB proceeds as proposed, we offer the following additional comments.

*a. Addition of new emission units under an existing PAL are subject to BAT.*

Armstrong Cement believes that this provision goes a long way toward rendering the PAL provision useless. The concept behind a PAL is to allow for operational flexibility while ensuring that emissions are not increased from a facility above the "significance" threshold. As EPA stated "the added flexibility provided under a PAL will facilitate your ability to respond rapidly to changing market conditions while enhancing the environmental protection afforded under the program." 67 Fed. Reg. 80186, 80189 (December 31, 2002). If new sources are required to apply BAT, and arguably to go through the plan approval process, the flexibility supposedly provided by a PAL is greatly diminished. In order to make a PAL useful, the rules must exempt changes made under a PAL from control technology requirements as well as permitting/plan approval requirements. The EQB has the authority to do both.

*b. Provisions regarding the establishment of an emissions limit for a proposed project (see 127.203a(a)(6) and (7)).*

If these provisions are retained, sections 127.203a(a)(6) and (7) should be revised to better specify the procedural requirements for establishing the emission limit, including any timing constraints. The regulations reference incorporation of an emissions

limit into "the required plan approval or the operating permit." This language suggests that a plan approval is required. The reference to operating permit suggests that the new emission limit may be incorporated into an operating permit. These provisions should be crafted to minimize any delays associated with establishing the new limit.

Another concern with these provisions is the formula used to establish the emissions limit. Armstrong Cement interprets the language as requiring the new limit to be set at the PTE of the emission unit plus the "emissions increase that results from the particular project." Armstrong Cement suggest that the EQB provide examples or better explain these provisions

#### **IV. Additional Comments**

Armstrong Cement offers these additional comments which we have arranged according to the sections of the NSR rules

##### *a Section 127.201a. Definitions*

"Actual emissions" is defined differently than the corresponding federal definition. The federal rule does not require a written determination for a more representative period. The federal definition should be adopted.

"Begin actual construction" is defined but then is not used in the regulations.

"De minimis emission increase" is defined based on an increase in "actual emissions" or the "potential to emit." It would seem to make sense that the de minimis concept be based on the new baseline actual emissions-to-projected actual emissions test. While we believe the concept of aggregation should not be included, if it is, the EQB needs to reconcile some of the old concepts with the new baseline actual-to-projected actual test. As written, NSR applicability would generally be based on the baseline actual emissions-to-projected actual emissions test but in assessing applicability based on aggregation of less than significant increase under section 127.203a(a)(4) sources would also need to employ the old concepts of "actual emissions" and "potential emissions" under the definition of "de minimis emissions increase." This approach is confusing and inconsistent.

"Regulated NSR pollutant" is defined to include "precursors" of any pollutant for which a NAQMS has been established. The scope of such "precursors" should be clarified, particularly with respect to PM<sub>2.5</sub>. Installations of SCR and SNCR and the use of ammonia as a reducing agent are becoming more prevalent as the DEP and the OTC proceed with additional NO<sub>x</sub> reductions. The OTC has suggested that SNCR be employed for cement kilns. While Armstrong Cement does not believe that SNCR is a demonstrated technology for wet process cement kilns, it is concerned that if at some point, ammonia is required as a reducing agent for NO<sub>x</sub>, that ammonia slip or increased

ammonia emissions could be implicated as a PM2.5 precursor. We note that the USEPA proposed rules regarding PM2.5 implementation in which it proposed that ammonia not be regulated as a precursor. See 70 Fed. Reg. 65999 (November 1, 2005). Armstrong Cement suggest that the EQB either adopt the proposed federal view of PM2.5 precursors or wait until the final PM2.5 implementation rule is promulgated before attempting to regulate PM2.5 and PM2.5 precursors under NSR.

"Significant" is defined in part to include "PM 2.5 or PM 2.5 precursors: 15 tpy." Armstrong Cement notes that the preferred option offered by USEPA in the PM2.5 implementation rule is to establish "significance" thresholds for PM2.5 precursors at existing significance rates for pollutants already included in NSR rules. For example, significance rates for NOx and SO2 would be 40 tpy. See 70 Fed. Reg. 66038.. Alternatively, the EQB could defer regulation of PM2.5 until such time as the USEPA finalizes its implementation rule.

*b. Section 127.203. Facilities subject to special permit requirements*

Subsection (c)(2) should be revised to clarify its applicability. As written, it applies the NSR requirements to a facility which was deactivated for a period in excess of 1 year. We suggest two clarifications. First, NSR should only apply to a "major facility" and not non-major facilities. Second, NSR should apply only upon reactivation of the major facility. The literal language suggests that NSR applies to a deactivated facility even if it never reactivates.

Subsection (e)(2) uses the phrase "enforcement limitation." The federal rule uses "enforceable limitation."

Subsection (g) establishes that PM2.5 precursors are subject to NSR unless the EPA or DEP determines that sources do not contribute significantly to PM2.5 levels which exceed the PM2.5 NAAQS. This provision conflicts with the EPA proposed PM2.5 implementation rule for ammonia and VOCs. The EPA proposal is to not consider VOCs and ammonia as regulated precursor unless the state or EPA makes a technical demonstration that such emissions significantly contribute to PM2.5 nonattainment. The EQB proposal reverses the presumption without any technical demonstration.

*c. Section 127.203a. Applicability determination*

Subsection (a)(4) establishes the procedures for determining the net emissions increase. In addition to comments submitted above, Armstrong Cement questions how PM2.5 precursors will be handled under the aggregation provisions. Specifically, will the emissions of different PM2.5 precursor species be added together to determine if the net emission increase is significant? We suggest that different PM2.5 precursors not be aggregated if the EQB opts to regulate PM2.5 precursors at this stage.

Subsection (a)(4)(iv) suggests that de minimis emission increases must be aggregated and appears to specify the consequences of an aggregation of de minimis projects exceeding a significance threshold. Armstrong Cement requests that this provision be revised to clarify that the LAER requirements do not apply to the de minimis emission increases.

Subsection (a)(5) describes the procedures for determining baseline actual emissions and requires the inclusion of "authorized emissions associated with startups and shutdowns." On the other hand, subsection (a)(6), which pertains to projected actual emissions, requires the inclusion of "emissions associated with startups, and shutdowns." Armstrong Cement questions the disparate treatment of emissions from startups and shutdowns. Apparently the proposed rules allow such emissions to be included in the baseline actual emissions only if they are "authorized" while all such emissions are required in the determination of projected actual emissions. Armstrong Cement suggests that this is more stringent than the federal program and is unreasonable.

Subsection (a)(6)(i)(C) provides for the "demand growth" exclusion. Armstrong Cement supports this common sense provision but requests clarification on the phrase "and that is unrelated to the particular project." Any emissions that could have been accommodated during the baseline period should inherently be excluded under the demand growth exclusion. Armstrong Cement requests an example of a situation wherein emissions could have been accommodated during the baseline period but cannot be excluded under the demand growth exclusion because the emissions are "related to the particular project."

*d. Section 127.205. Special permit requirements*

The proposed rule requires a modified facility subject to NSR to comply with LAER "except as provided in 127.203a(a)(4)(ii)(B)." Armstrong Cement suggests that this cross reference is in error and should be to 127.203a(a)(4)(iv). As indicated above, we believe that this cross reference is intended to exclude de minimis emission increases from LAER but suggest that the EQB clarify this.

*e. Section 127.218. PALs*

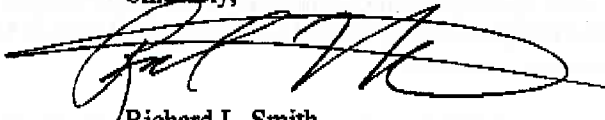
Subsection (f)(4) provides that, in establishing a PAL level, emissions from units constructed after the 2-year PAL baseline period are to be added to the PAL at a rate equal to the actual emissions of the unit. Armstrong Cement suggests that the "potential" emissions of any such unit be used as is the case under the federal program.

Armstrong Cement requests that the EQB give serious consideration to the above comments and suggests that incorporation of the federal rules is the best approach for

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Pennsylvania to proceed with its NSR reform program. Attached is a one-page summary of comments for review by the EQB members at the meeting.

Sincerely,



Richard L. Smith  
V.P. Operations

cc: Michael H. Winek, Esq.

Enclosure

## ARMSTRONG CEMENT & SUPPLY- ONE PAGE SUMMARY OF COMMENTS

The EQB should simply adopt the federal NSR rules by incorporating them by reference. The EQB should not develop rules that differ significantly, if at all, from the federal program.

The EQB exceeds its authority by promulgating NSR rules that are more stringent than the federal rules. In order to invoke the exception from the "no more stringent" provision in the Air Pollution Control Act, the EQB must make a technical demonstration that the more stringent rules are necessary to achieve and maintain the NAAQS. A self-serving declaration in the preamble is insufficient evidence.

Armstrong Cement supports the federal approach which provides for a 10-year look-back period for determining baseline actual emissions. However, if the EQB does not adopt the federal approach, the EQB should adopt a 5-year look back with allowance that another 2-year period out of the last 10 years be used if such period is more representative of normal source operations.

The short-term triggers (100 lb/hr and 1,000 lbs/day thresholds in the definition of "significant" for NOx and VOCs) should be deleted. There is no basis or reason to retain these triggers.

the Pennsylvania rules should not provide for aggregation of less than significant emission increases. The USEPA has indicated that it will be promulgating a rulemaking on aggregation. At the very least, the EQB should await the federal rulemaking before it addresses aggregation.

In order to make a PAL useful, the rules must exempt changes made under a PAL from control technology requirements (e.g., BAT) as well as permitting/plan approval requirements.

Armstrong Cement suggest that the EQB either adopt the proposed federal view of PM2.5 precursors or wait until the final PM2.5 implementation rule is promulgated before attempting to regulate PM2.5 and PM2.5 precursors under NSR.

Armstrong Cement requests an example of a situation wherein emissions could have been accommodated during the baseline period but cannot be excluded under the demand growth exclusion because the emissions are "related to the particular project."

The first part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom. It is shown that the structure of the atom is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles.

In the second part of the paper, the author discusses the problem of the structure of the nucleus. It is shown that the structure of the nucleus is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles.

The third part of the paper is devoted to a discussion of the problem of the structure of the molecule. It is shown that the structure of the molecule is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles.

In the fourth part of the paper, the author discusses the problem of the structure of the crystal. It is shown that the structure of the crystal is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles.

The fifth part of the paper is devoted to a discussion of the problem of the structure of the liquid. It is shown that the structure of the liquid is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles.

In the sixth part of the paper, the author discusses the problem of the structure of the gas. It is shown that the structure of the gas is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles.

The seventh part of the paper is devoted to a discussion of the problem of the structure of the plasma. It is shown that the structure of the plasma is determined by the laws of quantum mechanics, which are based on the principle of the uncertainty of the position and momentum of the particles.