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From: COMAS-MONTALVO, LUIS A [LACOMAS-MONTALVO@sunocoilnc.com]
Sent: Tuesday, June 27, 2006 3:59 PM
To: regcomments@state.pa.us
Subject: Proposed Modifications to General Provisions/Construction and Modification of Sources Part 25
Chapters 121 and 127

Please, find attached Sunoco, Inc. comments to the proposed modifications to the Non-attainment New Source Review regulation (25 PA. Code Chs 121 and 127). If you have a questions related to our comments, contact us at your earliest convenience.

Thanks.

<<Comments to the Proposed1.doc>>

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REVIEW COMMISSION

Sunoco, Inc.

Comments to the Proposed

General Provisions and Modification of Sources

Part 121 and 127

Chapter 127

Subpart E – New Source Review

127.201 General Provisions

- (c) It is clear under 40 CFR Part 51 and Part 52 that NSR review applies to only major stationary sources. However, in the proposed rule the word “stationary” was deleted from the description of sources that are subject to the rule. The definition of facility in Chapter 121 should be amended to ensure that it only includes stationary sources.
- (f) Facilities located in the five southeastern counties area will be severely affected by the proposed rule, which is much more stringent than the federal rule. This is at odds with Section 4.2(c) of APCA, which states that “The Board may not by regulation adopt an ambient air quality standard for a specific pollutant which is more stringent than the air quality standard which the EPA has adopted for the specific pollutant pursuant to section 109 of the Clean Air Act”. This is also contrary to Executive Order 1996-1 which directs PADEP not to issue regulations that are more stringent to the federal rule. A brief summary of the negative impacts are listed below:
 - o Facilities are considered major when they emit or have the potential to emit 25 TPY of NO_x or VOC.
 - o The five county area is classified as severe non-attainment, as under the 1-hr ozone NAAQS. Therefore, the NSR process is triggered when VOC or NO_x emissions exceed 25 TPY. If the area were classified as moderate non-attainment under the 8-hour ozone NAAQS the NSR trigger would be 50 TPY.
 - o The proposed NSR process will be based on a comparison of actual emissions to future actual emissions instead of comparing potential emissions to future potential as in the existing rule. Even with the inclusion of the unused capacity/increased utilization provisions in the NSR analysis, the proposed rule will be still more stringent than the “potential to potential” analysis under the existing rule.
 - o The proposed rule will add a new 15 year emission netting period to the NSR process. There is no explanation in the draft rule documentation justifying the addition of this process to NSR.
 - o Under the proposed rule, even small modifications at a major source could triggered LEAR and/or offset requirements.

- Many major facilities had or are in the process of installing BAT, BACT or LEAR controls as a result of permitting procedures, regulatory requirements (i.e., MACTs, CAIR, BART, state regulations), or enforcement actions by local, state and/or federal agencies. Sources from which offsets could be generated are becoming scarce. This will require more very expensive add on pollution control devices.
- The end result will be that many projects will not be implemented, and economic growth in the five counties will be severely restricted.

127.201a Definitions

Actual emissions

- (i) The proposed definition limits actual emissions to emissions from a unit during a consecutive 2-year period. The federal rule allows for a consecutive 24-month period (40 CFR 51.165(xii)(B)). This provides more flexibility, especially for sources with seasonable and/or batch production.

Emissions unit

- (i) 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, the following concern should be addressed in the final rule:
 - 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, 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.
 - If the new unit is subsequently included in a PAL during the two year period, it should be added as its potential to emit.

127.203 Facilities Subject to Special Permit Requirements

- (b)(1) Represents three-fold negative impact for the five county area
 - The area is classified as severe non-attainment
 - Five year look back period is based on actuals rather than potential
 - Added a third test: 15 year increases/decreases look back
 See comments under 127.201

127.203a Applicability Determination

(a)(4)(D) The rule should allow for ERCs generated by a facility located adjacent or within another facility, but not under common control with that facility (e.g., a portion of a facility sold to another entity) be considered credible decrease as an emission decrease.

(a)(5)(i) 2-year versus 24 months period - see comment under 127.201a
5 years versus 10 year look back.

- Facilities or operating units within a facility that have been out of operation in accordance with 127.215 (Reactivation) for several years will be difficult to reactivate without triggering NSR if they are modified or reconstructed. Due to the increased demand for low sulfur gasoline, diesel and other fuels refineries have restarted or are in the process of restarting units that were shutdown years ago due economic or marketing reasons. The process of restating these units will be negatively affected by the rule as proposed. The availability of sufficient fuel is a major concern in the five county area.
- Facilities with shutdown cycles of 5 years or more will not be able to include startup and shutdown emissions in the actual emissions baseline calculation.
- In the Background and Summary section of the proposed rulemaking DEP is soliciting comments on what types of incentives may be offered for owner and operators of facilities that achieved "environmental excellence". One of the listed potential incentives is a 10-year look back period instead of the 5-year period. The term environmental excellent is not defined in the rule and it will be certainly very subjective to apply. The 10-year look back period should be applicable to all sources to promote economic growth.

(A) The requirement allowing inclusion of fugitives when "**authorized**" is not included in the federal rule (40 CFR 52.21(b)(48)(ii)(a)) and should not be included in the final rule.

(C) There is an exclusion under 52.21(b)(48)(ii)(c) for limits established by a MACT. This should be included in the final rule.

(D) Federal rule allows for different 2-year periods for each pollutant (40 CFR 52.21(b)(48)(d). The State rule should incorporate this flexibility.

(F) The rule should allow for corrections to emissions statement even after payment has been made.

(a)(6) It is not clear how emissions that existing units could have accommodated are to be determined. The rule should qualify how these emissions are to be determined.

- Is this a historical/proven value not to exceed the approved potential emissions?

- If the process constraint is in an upstream or downstream unit, and the unit itself does not need to be modified, could the emissions that could have been accommodated be still included the analysis?
- Are emissions to be estimated in lb/hr, TPD, TPY, or as defined in the permit?

127.205 Special Permit Requirements

- (1) The regulatory quote seems to be wrong

127.128 PALs

- (f)(2) Should be 24 consecutive months instead of 2-year period. Federal allows for different 24-month period for each pollutant (40 CFR 52.21(aa)(6)).
- (4) The rule should include provisions for allowing a shakedown period when a new unit is added after the 2-year period
- (8) Should allow for electronic recordkeeping
- (10) Some of the main reasons for establishing a PAL are the effective use of capital and operational flexibility that it provides. Requiring BAT takes away the incentive for having a PAL. The proposed rule provides for sufficient safeguards in a PAL to properly increase or decrease PAL emissions without the need of demanding installation of prescriptive control technologies.

