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INDEPENDENT REGULATORY  
REVIEW COMMISSION

By Electronic Submission: [RegComments@state.pa.us](mailto:RegComments@state.pa.us)

June 27, 2006

Environmental Quality Board  
Rachel Carson State Office Building  
P.O. Box 8477  
Harrisburg, PA 17105-8477

**Re: Notice of Proposed Rulemaking, Nonattainment New Source Review, *Pennsylvania Bulletin*, Volume 36, Number 17, April 29, 2006.**

Dear Sir or Madam:

Dominion appreciates the opportunity to provide comment on the above-referenced notice of the proposed rulemaking, Nonattainment New Source Review (NSR). Dominion owns and operates a large number of facilities in Pennsylvania, including such facilities as fossil fuel-fired electric generation facilities, and natural gas pipeline compressor stations. Some of these facilities may be affected by this rulemaking. Dominion supports the Pennsylvania Department of Environmental Protection (DEP) efforts in development of revisions to the Pennsylvania nonattainment area NSR program to address the Federal NSR Reform package promulgated on December 31, 2002.

These NSR reforms have been in development for many years and there is little debate that they are needed. DEP has done a good job evaluating the different issues surrounding implementation of these important reforms and Dominion is in agreement with many of the changes.

In the April 29, 2006 *Pennsylvania Bulletin*, the nonattainment NSR program changes proposed by the Pennsylvania DEP that deviate from the federal NSR reform rules have been justified in order to maintain the national ambient air quality standards (NAAQS), consistent with Pennsylvania state law:

"... the Board has determined that to the extent *any* of the proposed amendments are more stringent than those required under the CAA, they are necessary to achieve or maintain the NAAQS, and therefore permissible actions under section 4.2(b)(1) of the APCA (Air Pollution Control Act)"<sup>1</sup>

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<sup>1</sup> Environmental Quality Board, Notice of Proposed Rulemaking, Nonattainment New Source Review, *Pennsylvania Bulletin*, Vol. 36, No. 17, April 29, 2006, pg. 5.

We do not disagree that nonattainment areas deserve additional air pollution control measures to assist with attainment of the NAAQS. We question, however, the contention that all the proposed "more stringent" changes will have any effect on attainment of the NAAQS in the nonattainment areas.

**The Pennsylvania DEP nonattainment NSR reform rules should remain consistent with the Federal rule and adopt the 10-year look-back for determining the "past actual" emissions baseline.**

The change from the current 2-year look-back to a 10-year look-back (5 years for electric utility steam generating units) is an extremely important part of the federal NSR reforms. The DEP proposed rule limits this flexibility to only 5 years in all cases.

EPA's Regulatory Impact Analysis addresses the environmental effects that may be expected to be derived from the change from a 2-year look-back to a 10-year look-back.

"The EPA believes that the change in baseline EPA is now finalizing will not result in any significant change to the environmental benefits derived from the NSR program. We do not have sufficient information to ascertain whether emissions benefits will be lost or gained as a result of this rule change, but in either case, the magnitude of the change is likely to be very small."<sup>2</sup>

Environmental groups and a number of states challenged the final look-back provisions of the federal NSR reform package. In June 2005, the D.C. Circuit Court of Appeals upheld the 10-year look-back, concluding that, although EPA data is lacking, EPA's "predictive judgement is entitled to deference."<sup>3</sup>

DEP's proposal for adoption of the emission baseline provision of EPA's NSR Reform rules significantly restricts the intended flexibility of the reform changes by reducing the time period for the look-back by half. EPA concludes the change will result in "very small" environmental changes. We believe that changing the look-back period by 50% should not be done unless there is greater justification than the given statement that "there is an increased possibility that NSR would apply and state-of-the-art air pollution control technology would need to be installed."<sup>4</sup> DEP offers no additional data that would improve upon EPA's analysis or cause any different view of the D.C. Circuit Court's decision.

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<sup>2</sup> U.S. Environmental Protection Agency, "New Source Review (NSR) Improvements, Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules", pg. F-7, November 21, 2002.

<sup>3</sup> *State of New York et al v. U.S. EPA*, United States Court of Appeals for the District of Columbia Circuit, June 24, 2005, pg. 47.

<sup>4</sup> Environmental Quality Board, Notice of Proposed Rulemaking, Nonattainment New Source Review, *Pennsylvania Bulletin*, Vol. 36, No. 17, April 29, 2006, pg. 5.

Dominion urges DEP to adopt the EPA recommendations for the actual emissions baseline as written in the 2002 NSR reform rules.

**Dominion urges the DEP to adopt the major source thresholds consistent with the "moderate" ozone nonattainment status under the new 8-hour ozone standard for the counties of Bucks, Chester, Delaware, Montgomery and Philadelphia.**

The DEP proposed nonattainment NSR rule includes a provision that would subject facilities located in the greater Philadelphia area to the 25 tons per year VOC or NO<sub>x</sub> major source thresholds of the recently revoked 1-hour ozone standard for "severe" nonattainment. This provision is not part of the federal NSR reform package. Under provisions of EPA's new 8-hour ozone standard implementation rules, the greater Philadelphia area has been designated as "moderate" nonattainment, with major source thresholds for VOC and NO<sub>x</sub> of 50 tons per year.

Many of the sources that would be forced to obtain permits and install control technology under the proposed nonattainment NSR rule are the very same sources whose emissions are already capped under the current ozone season NO<sub>x</sub> SIP Call and that will be subject to annual SO<sub>2</sub> and NO<sub>x</sub> caps under the Clean Air Interstate Rule (CAIR). Since these emission caps specifically cover these sources, there is no good reason to subject these sources to additional restrictions under NSR requirements that are more stringent than the federal rule. Many sources have already been subjected to all the requirements of the area's "severe" designation under the one-hour standard, including NO<sub>x</sub> RACT. In addition, EPA's final 8-hour implementation rule imposes anti-backsliding provisions for the purpose of maintaining continued progress toward emission reductions and air quality improvements in areas such as southeastern Pennsylvania that had not achieved attainment of the 1-hour standard when that standard was revoked. Thus, to the extent that DEP retains the lower major source thresholds set under the old one-hour standard, the Agency should at a minimum adopt the emission offset provisions of the federal program commensurate with the "moderate" classification under the 8-hour ozone standard (1:1.15, instead of the proposed 1:1.3 offset ratio).

**The DEP proposed nonattainment NSR reform rule revisions at §127.203a(a)(6) and (7) effectively limit the flexibility of the entire "past-actual-to-projected-actual" emissions test to a one-time increase and significantly expand the reporting requirements for NSR applicability determinations.**

The DEP has proposed a requirement that a new plan approval or operating permit be issued to incorporate as an emissions limitation any increase due to a change that results in an increase above a baseline actual determination. The emissions limit would be based on the sum of: baseline actual emissions, the portion of the increase that could have been accommodated prior to the change and any emissions increase that results from the change. Source owners must then monitor emissions for 5 years following the increase and report the emissions data within 60 days following the end of each calendar year. Ten years of monitoring is required if the increase involved an increase in design capacity or the unit's potential to emit the pollutant of concern.

The federal NSR reforms do not restrict the "past-actual-to-projected actual" applicability test through limitations imposed by permits. This provision represents a significant departure from the federal rule and very likely may cause EPA to reject the DEP SIP submittal. In a recent letter to the Virginia Department of Environmental Quality from EPA Region III, Air Protection Division Director Judith Katz expressed concern for state NSR programs that "sought to 'customize' its NSR regulation". The more the states' try to "customize" their state NSR programs, Director Katz argues, the "greater potential for the State-approved program requiring (or not requiring) permits from sources than would otherwise be required by the Federal program."<sup>5</sup>

The changes that DEP has proposed at §127.203a(a)(6) and (7) will undoubtedly force many sources to apply for many more permits and permit amendments without justified environmental benefit. This will create an undue burden on both the regulated sources and the permitting staff at DEP. This provision effectively negates the many benefits of the NSR reform package and may reverse much of the permit streamlining initiatives DEP has been working on for several years.

The limited flexibility, excessive complexity and burdensome recordkeeping and reporting requirements have been a universal criticism of the existing NSR rules. The proposed deviations from the federal rule reverse important relief provided by the federal reforms. DEP should drop these provisions from the Pennsylvania nonattainment NSR rules.

If you have any questions about these comments, please contact Bob Asplund @ 804-273-3012 or Lenny Dupuis @ 804-273-3022.

Respectfully,



Pamela F. Faggert

cc: R. B. Asplund  
L. R. Dupuis

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<sup>5</sup> U.S. EPA Region III letter from Judith M. Katz, Director, Air Protection Division, to Mr. James E. Sydnor, Acting Director, Air Division, Virginia Department of Environmental Quality.