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Subject: Comments on Proposed Nonattainment NSR regs

Attached, please find the PA Chamber's comments on DEP's proposed Nonattainment New Source Review regulations. Please feel free to contact me should you have any questions. We would welcome the opportunity to discuss our concerns further. Thank you.

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PENNSYLVANIA CHAMBER OF BUSINESS & INDUSTRY
COMMENTS REGARDING NONATTAINMENT NEW SOURCE REVIEW (NSR)

The Pennsylvania Chamber of Business and Industry is the largest, broad-based business association in the state. Our thousands of members statewide represent more than 50% of the private workforce. We are dedicated to advocating reasonable regulations that encourage economic growth while protecting the environment. The issue of NSR is a very important one to our members with significant implications to their business operations.

The Department's current NSR regulations are generally acknowledged by persons both inside and outside of the Department as being confusing and difficult to implement. The Department now has a chance to improve those regulations, and improve the business climate in Pennsylvania without sacrificing air quality. Unfortunately, the Department has not developed regulations that would benefit Pennsylvania. In most key areas, the Department has elected to be more stringent than federal requirements without any real justification. The preamble to the regulation states that the Board has determined that more stringent requirements are necessary to achieve ambient air quality standards. However, we find nothing in the Board's minutes or in other documents made available to the Board that suggest that the Board has made any such determination. If there is indeed modeling or other technical support for the increased stringency, such information should be made available to all members of the Board and to the public for review and analysis.

The Chamber has, for many years, been disappointed with the Department's implementation of the operational flexibility provisions required by the Air Pollution Control Act ("APCA"). It seems that many regional offices look to find ways to avoid using operational flexibility rather than providing the flexibility that industry needs. Unfortunately, the proposed

regulations continue this track record. The Department's NSR regulations would strip out many of the flexibility provisions found in the federal regulations. Overall, we believe the NSR regulations as proposed will stifle the competitiveness of Pennsylvania industry, 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 by the Department's own Citizens Advisory Council and Air Quality Technical Advisory Committee 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 sound scientific data.

In addition, the Chamber requests that you 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, large 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 reactivating production units. This includes facilities producing such products as low sulfur fuels. 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. Although DEP had challenged the 10 year look-back period the federal court upheld that provision. DEP should accept that decision.

  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, complex 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. Although the Department asserts that it must require BAT for new sources, that is not accurate. Section 6.6(c) of the 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, the need to prove data submissions with testing, reporting, etc. In short, Plant-wide Applicability Limitations are not a desirable carrot for industry in Pennsylvania.

- Emission Reduction Credit (ERC) Generation. A facility making improvements that are classified as BAT would apparently be prohibited from generating ERC's per the proposed rule. In practice this will prohibit many sources from conducting emissions netting. Not to mention, the historic determination of BAT in the Department is frequently arbitrary meaning that even within the Department the regulation cannot be applied consistently with the Commonwealth. This provision should be removed from the proposed rulemaking. To counteract past practices by the Department, we also request the Department to clarify that BAT only applies to new sources, and not to existing or modified sources, based on the controlling definitions contained in 121.1.

- De minimis Emission Aggregation Period. Not only do the Department's proposed regulations reduce 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 to remain consistent with Federal requirements.

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.

Furthermore, it does not appear that the Department has fully recognized the effects of the proposed implementation of the short-term nonattainment NSR triggers (i.e., lb/hr or lb/day) and the impact they would have under an actual-to-projected actual (or actual-to-potential) applicability testing versus the previous allowable to allowable applicability testing for existing sources. In short, the Department's past implementation of these short-term NSR triggers has been arbitrary and without specific regulation or guidance. Following this course of proposed regulation would undoubtedly lead to a difficult implementation that could significant hamper economic growth in PA.

- Five County Philadelphia Area. Although EPA has designated the five-county area as moderate non-attainment for the 8-hour ozone standard, the Department's proposed regulations would change the threshold so that facilities in these counties continue to be treated as though the area was severe non-attainment for ozone. This differentiation will impose a substantial burden on a part of the state which has up to this point shown economic growth and will dampen that growth. Facilities in the five-county area have been subject to rigorous emission limits and permit standards over the past ten years and have made significant reductions in emissions. When combined with the 15 year aggregation requirement and the reduction of the look-back period to five years, the impacts on facilities in these counties will be severe. Under the proposed rules even small modifications could trigger LAER (lowest achievable emission rates) and/or offset requirements. Many major facilities have or are in the process of installing significant control technologies (BAT or BACT) as a result of permitting procedures or regulatory requirements. Sources from which offsets could be generated are becoming scarce. Thus, very expensive add-on pollution control devices will be mandated by the Department's approach. The end result will be that many projects will not be implemented and economic growth in these five counties will be severely restricted. Moreover, the Department's justification for this disparate treatment seems to be based on its litigation position with EPA regarding the eight hour ozone standard. In essence, the Department is proposing a regulation that would continue the one hour ozone standard in Southeastern Pennsylvania. This is akin to creating a new and more stringent ambient air quality standard for ozone. Such an approach is clearly prohibited by Section 4.2(c) of the Air Pollution Control

Act. Accordingly, the Department should drop the disparate treatment of the five-county area.

- PM 2.5 Requirements. The proposed regulations prematurely incorporate 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.

- Section 127.205(1) cross-references 127.203a(a)(4)(ii)(B). We find no such section. The cross-reference should be corrected.

- New Emission Units. The proposal considers an 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, 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.

Conclusion

The PA Chamber has serious concerns with this package as currently proposed. We encourage the DEP to be no more stringent than federal regulations unless there is a compelling, state-specific need. Upon review of both these proposed regulations and the relevant EQB minutes, we have found no such justification. However, we have found serious impediments to the current operations and future growth of our member companies. We would welcome an opportunity to discuss our concerns with this package.