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INDEPENDENT REGULATORY
REVIEW COMMISSION

June 28, 2006

Pennsylvania Environmental Quality Board
PO Box 8477
Rachel Carson State Office Building, 15th Floor
Harrisburg, PA 17105-8477

Deliver by email to RegComments@state.pa.us

Re: Nonattainment New Source Review
Proposed Rulemaking

To the Docket:

Arkema, Inc. hereby submits comments on the April 29, 2006 proposed amendments to the Commonwealth of Pennsylvania Nonattainment New Source Review (NSR) program revising 25 Pa. Code 127, published at 36 Pa. B. 1991. The Pennsylvania Environmental Quality Board (EQB) has proposed these regulations to incorporate the United States Environmental Protection Agency (EPA) December 31, 2002 New Source Review amendments (2002 final rule). Arkema operates several chemical manufacturing facilities that could be impacted by this regulation. Arkema comments on several specific issues raised in the EQB proposed rule.

Lookback Period

EPA finalized a 10-year lookback period for NSR evaluations in the 2002 final rule. In the 2002 final rule, EPA established that facilities might use any consecutive 24 months to constitute the period under which a facility should evaluate past actual emissions, which is not tied to any baseline year that may have been established under the 1990 Clean Air Act Amendments. At proposed 25 Pa. Code 127.203a, EQB proposed to hold the existing five-year lookback period in place in the five-county Philadelphia metropolitan area. EQB proposes to maintain the 2-year period instead of adopting EPA's 24 months, disallowing facilities to use the most representative time period with the annual calendar to describe past actual emissions. As EPA described in the 2002 final rule, the 10-year lookback period allows facilities to better capture business cycle variation and ensure that the past-actual emissions are appropriate representations of prior operating conditions. EQB claims in the rule preamble that maintaining the 1-hour ozone nonattainment lookback period is needed in the EQBs strategy for the upcoming 8-hour ozone nonattainment demonstration. However, EQB failed to include any detailed analysis of all options that were considered for the upcoming attainment demonstration. Since EQB failed to justify why the EPA's 10-year lookback period is not appropriate, then EQB must default to the EPA's 2002 final rule lookback period as required in §4.2(b)(1) of the Pennsylvania Air Pollution Control Act, which requires equivalent stringency with applicable EPA regulations in the Pennsylvania Clean Air Act program.

EQB proposes to require that facilities utilize the same baseline year for all regulated NSR pollutants, in direct conflict with EPA's 2002 final rule. EPA recognized that facilities emit different pollutants from different equipment, and for different process reasons. EQB should permit facilities to select baseline periods for each pollutant as is appropriate for the pollutant of record, where the baseline 24-month period for pollutants may vary within a facility.

Conformance with the 2002 final rule requires that EQB also abandon any proposed changes to §127.203a referencing the 1991 baseline period for any contemporaneous change evaluations under the NSR program. Facilities change ownership on a regular basis, and the owners responsible for baseline changes prior to the last ten years are no longer responsible for operations at regulated sources. Creditable reductions generated at a site often stay with prior owners or are consumed in unrelated operations for facilities, or parts of facilities, which are sold to new operators. Therefore, tying NSR compliance to an arbitrary baseline from 15 years ago represents an unfair burden, especially since EQB is silent on how to restate NSR baselines for facilities that are combined, divided, or sold.

Major Source Definition

EQB has proposed at proposed 25 Pa. Code 127.201(f) to maintain the prior 1-hour ozone nonattainment major source definitions for the 5-county Philadelphia metropolitan area, with no justification as why keeping the 25 TPY ozone major source definition is required. EQB does not support that allowing the major source threshold to increase from 25 TPY to 50 TPY is required in the upcoming 8-hour ozone attainment demonstration. The proposed rule will place an undue regulatory burden on smaller facilities that must maintain major source status under NSR with no demonstrated benefit to the environment. Arkema operates facilities in other former 1-hour ozone severe nonattainment areas where the permitting authorities have allowed the major source definition to increase from the former 25 TPY to 100 TPY, and the permitting authorities have not cited that maintenance of an arbitrary lower major source threshold is required for the upcoming 8-hour attainment designation. Arkema understands that the 5-county metropolitan area is a part of the Northeast Transport Region, where the ozone major source threshold is constrained to 50 TPY. Arkema requests that EQB ensure that the final Section 127 rule conforms to the 2002 final rule.

Thank you for the opportunity to comment on the proposed New Source Review regulations. Please contact me with any questions.

Sincerely,

Rich Raiders

Rich Raiders
Environment and Sustainable Development Department