

Original: 2535



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June 28, 2006

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

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2006 JUL -3 AM 9:20
INDEPENDENT REGULATORY
REVIEW COMMISSION

Re: *Comments to Proposed Rulemaking on Nonattainment New Source Review (NNSR)*
25 Pa Code Chapters 121 and 127 (Subchapter E)
EQB One Page Summary

Dear Sir or Madame:

The Electric Power Generation Association (EPGA) is a regional trade association of electric generating companies with headquarters in Harrisburg, Pennsylvania. Its members include AES Beaver Valley, LLC, Allegheny Energy Supply, Cogentrix Energy Inc., Edison Mission Group, Exelon Generation, FirstEnergy Generation Corp, Mirant Corporation, PPL Generation, Reliant Energy and UGI Development Company. These companies own and operate more than 122,000 megawatts of electric generating capacity, more than half of which is located in the mid-Atlantic region.

We welcome the opportunity to comment on the proposed NNSR regulation changes (Pennsylvania Bulletin Vol. 36, No. 17, April 29, 2006). EPGA believes that the revised regulations, if promulgated as published, will have a significant negative impact on the viability of Pennsylvania industry and will certainly place Pennsylvania sources at a competitive disadvantage.

As requested in the proposed rulemaking, EPGA is providing, as an attachment to this letter, a one page summary of our comments for distribution to the Board.

If you have any questions or comments regarding this matter, please feel free to call me at (717) 909-3742.

Sincerely,

Douglas L. Biden

Douglas Biden
President

cc: John Slade (PaDEP)
John H. Jewett (IRRC)

EPGA COMMENTS TO PROPOSED NNSR RULEMAKING

(One-Page Summary)

EPGA strongly encourages the Environmental Quality Board (EQB) to revise Subchapter E NNSR regulations by adopting the federal Non-attainment New Source Review (NNSR) regulations in their entirety.

This approach ensures consistency with both the federal NNSR rule and Pa Code Title 25 Subchapter D, which implements the Prevention of Significant Deterioration (PSD) attainment New Source Review through incorporation by reference. Any changes to the federal rule necessitated by legislative or judicial actions are transparent, enacted immediately, and not subject to Pennsylvania regulatory development and State Implementation Plan (SIP) revision requirements. Further, that action prevents unnecessarily complex and unnecessarily stringent regulations from disadvantaging Pennsylvania based facilities by adding costs and burdens which are not present under other states' regulations which have adopted the federal programs for New Source Review (NSR). These additional costs could result in companies deciding not to invest in facilities located in Pennsylvania.

The Pa Air Pollution Control Act (APCA) requires that, *"(b) Control measures or other requirements adopted under subsection (a) of this section shall be no more stringent than those required by the Clean Air Act unless authorized or required by this act or specifically required by the Clean Air Act."* The Pennsylvania Department of Environmental Protection (PaDEP or Department) has not provided an adequate demonstration of need to require an NNSR regulation that is more stringent than the federal rule. Historical precedent is not a demonstration of need.

The proposed rulemaking, while attempting to maintain a historical state regulation, is more stringent, more complex, more confusing and subject to more diverse interpretation at the regional office level. The revised NNSR is very different from the historical regulation it is being proposed to replace and does nothing to simplify what is, in many cases, a confusing and convoluted applicability test (§127.203a).

The preamble to the proposed rule points out several instances where the proposed rule is more stringent than the federal rule and will likely result in less emissions and the requirement to install additional controls due to increased occurrences of NSR applicability. This presumption is flawed. Many practical projects that trigger NSR will simply not be pursued. This includes modernization and efficiency improvements at existing sources that are necessary to maintain economically viable production units. When these projects are abandoned, the subject production, or improvement projects, will likely shift to other, out of state, facilities where the improvement projects are not subject to more stringent state-specific non-attainment NSR regulations. EPGA further suggests that these costs should be shown as economic losses to the Commonwealth. The preamble to the proposed rulemaking ignores these costs and shows the only compliance cost as, *"This proposed rulemaking will reduce the operating costs of industry through enhanced operational flexibility under PALs."* It is disingenuous and economically flawed for the EQB to ignore the very real economic consequences of this proposed rule.

Incorporating the federal regulations by reference effectively removes an unnecessary competitive disadvantage from the Pennsylvania Code.



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**Re: *Comments to Proposed Rulemaking on Nonattainment New Source Review (NNSR)*
25 Pa Code Chapters 121 and 127 (Subchapter E)
*ID #7-399 (#2535)***

Dear Sir or Madame:

The Electric Power Generation Association (EPGA) is a regional trade association of electric generating companies with headquarters in Harrisburg, Pennsylvania. Its members include AES Beaver Valley, LLC, Allegheny Energy Supply, Cogentrix Energy Inc., Edison Mission Group, Exelon Generation, FirstEnergy Generation Corp, Mirant Corporation, PPL Generation, Reliant Energy and UGI Development Company. These companies own and operate more than 122,000 megawatts of electric generating capacity, more than half of which is located in the mid-Atlantic region.

We welcome the opportunity to comment on the proposed NNSR regulation changes (Pennsylvania Bulletin Vol. 36, No. 17, April 29, 2006). EPGA believes that the revised regulations, if promulgated as published, will have a significant negative impact on the viability of Pennsylvania industry and will certainly place Pennsylvania sources at a competitive disadvantage.

General Comments

EPGA strongly encourages the Environmental Quality Board (EQB) to revise Subchapter E NNSR regulations by adopting the federal Non-attainment New Source Review (NNSR) regulations in their entirety.

This approach ensures consistency with both the federal NNSR rule and Pa Code Title 25 Subchapter D, which implements the Prevention of Significant Deterioration (PSD) attainment New Source Review through incorporation by reference. Any changes to the federal rule necessitated by legislative or judicial actions are transparent, enacted immediately, and not

subject to Pennsylvania regulatory development and State Implementation Plan (SIP) revision requirements. Further, that action prevents unnecessarily complex and unnecessarily stringent regulations from disadvantaging Pennsylvania-based facilities by adding costs and burdens which are not present under other states' regulations which have adopted the federal programs for New Source Review (NSR). These additional costs could result in companies deciding not to invest in facilities located in Pennsylvania.

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The proposed rulemaking, while attempting to maintain a historical state regulation, is more stringent, more complex, more confusing and subject to more diverse interpretation at the regional office level. The revised NNSR is very different from the historical regulation it is being proposed to replace and does nothing to simplify what is, in many cases, a confusing and convoluted applicability test (§127.203a).

The preamble to the proposed rule points out several instances where the proposed rule is more stringent than the federal rule, and will likely result in less emissions and the requirement to install additional controls due to increased occurrences of NSR applicability. This presumption is flawed. Many practical projects that trigger NSR will simply not be pursued. This includes modernization and efficiency improvements at existing sources that are necessary to maintain economically viable production units. When these projects are abandoned, the subject production, or improvement project, will likely shift to another, out of state, facility where the improvement project is not subject to a more stringent state-specific non-attainment NSR regulation. EPGA further suggests that these costs should be shown as economic losses to the Commonwealth. The preamble to the proposed rulemaking ignores these costs and shows the only compliance cost as, *“This proposed rulemaking will reduce the operating costs of industry through enhanced operational flexibility under PALs.”* It is disingenuous and economically flawed for the EQB to ignore the very real economic consequences of this proposed rule.

Incorporating the federal regulations by reference effectively removes a competitive disadvantage from the Pennsylvania Code.

Specific Comments

In lieu of adoption of the federal NNSR rules, which is clearly the best and most desirable option for Pennsylvania, EPGA offers the following specific comments to improve the proposed rulemaking.

1. §127.201a Definitions. *Allowable Emissions-* The definition as written “...hours of operation, or both, **and** [emphasis added] the most stringent of the following...” could be construed to impose Part 60 (NSPS) or Part 61 (NESHAP) emissions limits on otherwise unaffected units in the calculation of allowable emissions.

Subpart (i) of the definition must be clarified so as not to subject previously unaffected units to NSPS or NESHAP standards.

2. §127.201a Definitions. *Major Modification-* (i) The definition as written is imprecise. If conditions (A) and (B) or any combination thereof meet the criteria of the expression major modification, clarification is necessary.

The terms “either/or” need to be used if that is the intent of the regulation.

3. §127.201a Definitions. *Significant-* (i) Lbs/hr and lbs/day emissions rate triggers are unduly burdensome if not impossible to estimate for some processes. Further, these triggers are in addition to the annual triggers that are specified in the federal program. These hourly and daily triggers could cause a project to trigger PA NNSR when in fact there isn't any annual increase in emissions. The EQB must show the value, and need per the PA APCA, of maintaining these archaic averaging period triggers. This is especially problematic as historically, the emissions test was “potential-to-potential” emissions rather than the “actual to future-projected actual” as is contained in this proposed regulation.

The lbs/hr and lb/day emissions rate triggers should be eliminated.

4. §127.203 (f) & (g) PM-10 and PM-2.5 precursors are not defined. This could lead to inconsistent application of this provision.

PM-10 and PM-2.5 precursors and the method for determining the relationship of precursors to PM-10 and PM-2.5 emissions must be defined.

5. §127.203a (3) This provision would subject all new emissions units to NNSR. There is no incentive for facilities to reduce emissions (by installation of controls or permanent retirements) from existing sources.

This provision should be removed to encourage cost-effective emissions reductions at existing sources.

6. §127.203a (5)(i) Baseline actual emissions should be calculated in terms of average annual emissions from consecutive 24-month periods preceding the project consistent with the established policy and guidance and the federal rule. The proposed regulations specify a 5-year look back period rather than the 10-year look back period specified in the federal program for industries other than electric generating units (EGU). The 10-year baseline period specified in the federal program recognizes the cyclical nature of the economy and conditions facing many industries. Further, a requirement to calculate emissions in terms of calendar years is inconsistent with the federal rule and would seem to be included for the Department's convenience. In fact, the definition of actual emissions in §127.201a specifies, “...2-year period which immediately precedes the particular date...”

Baseline actual emissions should be calculated from consecutive 24-month periods in the 10 years preceding the project's commencement of construction. This is consistent with the federal program.

7. §127.203a (6)(i) Projected future actual emissions should not become permit restrictions. This provision will extend the monitoring and reporting period well beyond the 5-year contemporaneous period that is provided for in the federal rules. This requirement subjects all projects to formal NNSR review, analysis, and regulatory process and will increase the permitting backlog encountered at the regional level. Projects that otherwise could proceed with notice and reporting requirements under the federal rule are subject to bureaucratic delay and permitting process.

This provision should be removed to allow self-analysis, monitoring and reporting consistent with established policy and guidance as per the federal rule.

8. §127.203a (7)(i) Project emissions should be calculated, monitored and reported in terms of 12 month periods consistent with the established policy and guidance and the federal rule. A requirement to report emissions in terms of calendar years is inconsistent with the intent to monitor project emissions for the contemporaneous period directly following the Project's initial operation. Monitoring and reporting of monthly emissions is not problematic for affected sources.

Reporting requirements should be established as the 12-month period following the project's commencement of operation.

9. §127.203a (4) (iii) Applicability determination - De minimis aggregation should be limited to projects that are inextricably related during the 5-year contemporaneous period. This is intended to prevent "staging" of projects to avoid NNSR. Blanket de minimis aggregation over a 15-year window is repressive.

De minimis aggregation should be limited to a 5-year contemporaneous period and only required in the case of similar projects.

If you have any questions or comments regarding this matter, please feel free to call me at (717) 909-3742.

Sincerely,

Douglas L. Biden

Douglas L. Biden
EPGA - President

cc: John Slade (PADEP)
John H. Jewett (IRRC)