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# Senate Environmental Resources and Energy Committee

Senator Mary Jo White  
Chairman

Patrick Henderson, Executive Director

Room 168 • State Capitol Building  
Mailing address: Senate Box 203021 • Harrisburg, PA 17120-3021  
Phone: 717-787-9684 • FAX: 717-787-6088

July 18, 2008

Joseph R. Powers, Acting Chairman  
Environmental Quality Board  
15<sup>th</sup> Floor Rachel Carson Building  
P.O. Box 8477  
Harrisburg, PA 17105-8477

Re: Comments on Proposed Rulemaking – Control of NO<sub>x</sub> Emissions from Cement Kilns (#7-419) and Control of NO<sub>x</sub> Emissions from Glass Melting Furnaces (#7-420)

Dear Acting Chairman Powers:

We are writing to express our views on two proposed rulemakings before the Environmental Quality Board (Board). The two rulemakings attempt to control NO<sub>x</sub> emissions from cement kilns and glass melting furnaces.

Compliance options for meeting the proposed NO<sub>x</sub> emission limits include the purchase of Clean Air Interstate Rule (CAIR) NO<sub>x</sub> Ozone Season allowances and a system-wide averaging system for facilities under common ownership (also known as trading).

For example, in the proposed rulemaking for cement kilns (§129.404, Compliance Demonstration), facilities can demonstrate compliance with the proposed rule by surrendering one CAIR NO<sub>x</sub> Ozone Season allowance to the Department of Environmental Protection for each ton of NO<sub>x</sub> by which the combined actual emissions exceed the allowable emissions. A similar provision is found in the proposed rulemaking for glass melting furnaces (§129.309).

Our concern is that on July 11, 2008, the U.S. Court of Appeals for the District of Columbia overturned the CAIR. Specifically, the Court found that the state NO<sub>x</sub> budgets as determined by the U.S. Environmental Protection Agency were “arbitrary and capricious.” We question the ability of the Board to move forward with these regulations if the Court has vacated the CAIR budget and allowance system for NO<sub>x</sub> emissions in Pennsylvania and other states.

Furthermore, we question the Board’s proposal for allowing system-wide averaging for NO<sub>x</sub> emissions for facilities under common ownership (§129.309 (b) (3) and §129.404 (b) (3)). We see no environmental justification for allowing facilities under common ownership to trade NO<sub>x</sub> allowances while prohibiting facilities under a different corporate ownership from trading allowances. This could lead to the absurd situation of two facilities in proximity to each other not being allowed to trade to reduce emissions in that vicinity because they are owned by different corporations. However, two facilities on opposite sides of the state could trade emission allowances – potentially to the detriment of the local environment – simply because they are under the same corporate umbrella. While we support the concept of NO<sub>x</sub> trading, we would favor removing the requirement for being “under common control of the same owner or operator in this Commonwealth” from the system wide averaging section of both rulemakings.

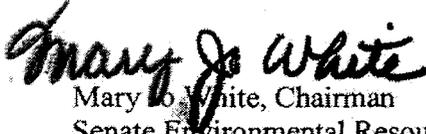
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Finally, we also urge the Board to ensure that delivery of any final rulemaking to the Senate and House standing committees be completed with sufficient time to permit the committees to fully evaluate and utilize any options available under the Regulatory Review Act. We note that Senate leadership has already announced that there will be no post-election session this year, and therefore urge the Board to schedule its consideration of this and other final regulatory items accordingly.

Thank you for your consideration of these comments. If you require additional information or clarification, please do not hesitate to contact our offices.

Sincerely,



Mary Jo White, Chairman  
Senate Environmental Resources  
& Energy Committee



Raphael J. Musto, Democratic Chairman  
Senate Environmental Resources  
& Energy Committee

cc: Honorable Camille "Bud" George  
Honorable Scott Hutchinson  
Senate Environmental Resources & Energy Committee Members