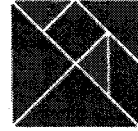


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Ontelaunee Power Operating Company, LLC
5115 Pottsville Pike
Reading, Pennsylvania 19605

2012 SEP 10 PM 3:14



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September 5, 2012

Via Electronic Mail

Environmental Quality Board
Rachel Carson State Office Building, 16th Floor
400 Market Street
Harrisburg, PA 17101-2301
RegComments@pa.gov

**RE: Comments on Proposed Rulemaking: 25 Pa. Code Chapters 121 and 139;
Measurement and Reporting of Condensable Particulate Matter Emissions**

Dear Environmental Quality Board Members:

Ontelaunee Power Operating Company, LLC (Ontelaunee Power) submits these comments on the above-referenced proposed revisions to 25 Pa. Code Chapters 121 and 139, as published at 42 Pa. Bull. 4363 (July 7, 2012). Ontelaunee Power, a subsidiary of Dynegy, owns and operates the Ontelaunee Energy Center, a 580 megawatt natural gas-fired combined-cycle plant located in Reading, Berks County, Pennsylvania.

Ontelaunee Power requests that the Board revise proposed § 139.12(c) to clarify that, consistent with federal regulations, condensable particulate matter is not included in determining compliance with PM-10 and/or PM-2.5 emission limits that were established prior to January 1, 2011, unless required by a plan approval, operating permit, or the SIP. As drafted, proposed § 139.12(c) provides that compliance with a "particulate matter" emission limit issued by the Department before January 1, 2011 will not be based on condensable particulate matter unless required by a plan approval, operating permit, or the SIP. The reference to "particulate matter" in proposed § 139.12(c) is ambiguous and that ambiguity has potentially significant adverse consequences for regulated sources that, like Ontelaunee Energy Center, have PM-10 and/or PM-2.5 emission limits issued by the Department prior to January 1, 2011.

The ambiguity in the reference to "particulate matter" is this: on the one hand, proposed § 139.12(c)'s reference to "particulate matter" may mean that compliance with any particulate matter emission limitation -- be it expressed as "PM-10," "PM_{2.5}" or "particulate matter" -- in a permit issued before January 1, 2011 will not be based on condensable particulate matter (unless otherwise clearly required by a plan approval, operating permit, or the SIP). On the other hand, the reference to "particulate matter" may mean that only permit

limits explicitly stated as “particulate matter”¹ would be covered by the compliance process set out in subsection (c), such that a “PM-10” or “PM_{2.5}” permit limit adopted before January 1, 2011 would in all cases be based on both condensable and filterable particulate matter. This ambiguity must be eliminated by a clear statement that compliance with PM-10 or PM_{2.5} emission limits in permits issued before January 1, 2011 is not based on condensable particulate matter (unless otherwise clearly required by a plan approval, operating permit, or the SIP).

Under the USEPA’s new source review rules, condensable particulate matter is not considered when determining compliance with PM-10 or PM_{2.5} emission limitations issued prior to January 1, 2011. Specifically, 40 C.F.R. § 51.166(b)(49)(i)(d)(vi) and 40 C.F.R. § 52.21(b)(50)(i)(d)(vi) state, in relevant part, that, “Compliance with emission limitations for PM, PM_{2.5} and PM₁₀ issued prior to [January 1, 2011] shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan.” Recently proposed revisions to these federal rules confirm that compliance with PM-10 and PM_{2.5} emission limits issued before January 1, 2011 are not based on condensable particulate matter.²

This issue is very important for sources, such as Ontelaunee Energy Center, for which PaDEP established a “PM-10” emission limit in a permit issued before January 1, 2011. If the wording of proposed § 139.12(c) is interpreted to apply only to permit limits expressed as “particulate matter” (to the exclusion of permit limits expressed as “PM-10” or “PM_{2.5}”), all PM-10 permit emission limits adopted prior to January 1, 2011 would be covered by proposed § 139.12(b) and, thus, now required to include both condensable and filterable particulate matter in compliance demonstrations. Such a result would be contrary to federal requirements and fundamentally unfair to sources, like Ontelaunee Energy Center, that have had PM-10 limits in their permits/plan approvals for numerous years (prior to January 1, 2011) without a clear requirement to include condensable particulate matter, but now, for the first time, would be required to include condensable particulate matter in compliance determinations. Such a result would effectively rewrite such PM-10 permit emission limits by making them significantly more stringent (i.e., had condensables been included at the time the PM-10 permit limit was initially established, the permit limit would have a higher value to account for the inclusion of condensables).

¹ While the term “particulate matter” is broad enough to include PM-10 and PM_{2.5}, in the context of proposed § 139.12(b), which refers explicitly to “PM-10 and PM_{2.5}” (in contrast to “particulate matter” as stated in proposed § 139.12(c)), the narrow - and presumably unintended - interpretation of proposed § 139.12(c) is not implausible.

² 77 Fed. Reg. 15663-64 (Mar. 16, 2012) (proposing to revise 40 C.F.R. § 51.166(b)(49)(i)(a) and § 52.21(b)(50)(i)(a) to state, in relevant part, “Compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to [January 1, 2011] shall not be based on condensable particular matter unless required by the terms and conditions of the permit or the applicable implementation plan.”).

We do not believe that proposed § 139.12(c) is intended to apply only to permit limits expressed as “particulate matter” to the exclusion of permit limits expressed as “PM-10” or “PM_{2.5}”.³ As explained by Joyce Epps, Air Bureau, Chief, PaDEP, the Department did not intend to require condensables to be retroactively included in compliance demonstrations for sources with emission limits based on the 1971 PM NAAQS.⁴ Likewise, the USEPA has recognized the unfairness of potential retroactive liability for sources with prior PM-10 emission limits that were not otherwise clearly based on condensable particulate matter. 73 Fed. Reg. 28321, 28335 (May 16, 2008) (“The EPA acknowledges the legitimate concerns raised by commenters concerning potential exposure to retroactive enforcement and has established rules to address this issue.”). Nevertheless, the ambiguity in the wording of proposed § 139.12(c) leaves open the possibility of that unfair outcome.

To eliminate the ambiguity in proposed § 139.12(c) and the unfair adverse consequences that potentially result from such ambiguity, Ontelaunee Power recommends that proposed § 139.12(c) be revised, as follows (recommended text is bolded and double underscored):

(c) Compliance with a particulate matter, **PM-10, or PM_{2.5}** emission limitation issued by the Department prior to January 1, 2011, will not be based on condensable particulate matter unless required under the terms and conditions of a plan approval, operating permit or the State Implementation Plan codified in 40 CFR 52.2020 (relating to identification of plan).

Alternatively, the Board could revise proposed § 139.12(b) to clearly state that PM-10 (and PM_{2.5}) limits established prior to January 1, 2011 will not be based on condensable particulate, unless otherwise required by a plan approval, operating permit, or the SIP. At the very least, if the Board does not revise the text of (c) as recommended, it must clearly explain in the preamble to the final rule/response to comments that the term “particulate matter” as used in § 139.12(c) includes permit limits expressed as PM-10 (and PM_{2.5}) such that PM-10 (and PM_{2.5}) permit limits issued prior to January 1, 2011 are not based on condensable particulate matter, unless otherwise required by a plan approval, operating permit, or the SIP.

³ To the extent, if any, the Board intends that (absent a requirement in an otherwise applicable operating permit, plan approval or SIP) any PM-10 limit established in permit prior to January 1, 2011 include condensables in compliance demonstrations, Ontelaunee Power objects. Such a requirement would contradict the Board’s statements that the proposed rulemaking would not impose new or additional requirements or compliance costs on owners and operators of existing stationary sources (42 Pa. Bull. at 4365), and be unfair and unlawful.

⁴ See PaDEP, Air Quality Technical Advisory Committee Meeting Minutes, Oct. 20, 2011, at 9.

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We appreciate the Board's consideration of these comments. If you have any questions regarding our comments, please contact Larry Waite, Senior Environmental Professional, Dynegy Operating Company, at 618-206-5928.

Sincerely,

A handwritten signature in black ink, appearing to read "David Gibson", written in a cursive style.

David Gibson
Plant Manager
Ontelaunee Energy Center

cc: Larry Waite, Dynegy Operating Company

**Summary of Comments Regarding Proposed Rulemaking
42 Pennsylvania Bulletin 4363-4367 – Saturday, July 7, 2012
25 Pa. Code Chapters 121 and 139**

Submitted by:

Ontelaunee Power Operating Company, LLC
5115 Pottsville Pike
Reading, PA 19605
David M. Gibson, Plant Manager

Ontelaunee Power Operating Company (Ontelaunee Power) believes a change should be made to the proposed revisions to 25 Pa. Code Chapters 121 and 139 that were published in the July 7, 2012 Pennsylvania Bulletin. The requested change will improve clarity and provide consistency with the analogous federal regulatory provisions.

The requested change involves making clear that sources subject to PM-10 and PM-2.5 emission limits that were issued prior to January 1, 2011 are not required to consider condensable particulate matter when determining compliance with such limits. That condensable particulate matter should not be considered is clear in the relevant federal provisions [40 CFR 51.166(b)(49(i)(d)(vi) and 52.21(b)(50)(i)], but is not clear from the proposed wording of §139.12(c). Therefore, Ontelaunee Power believes the wording of proposed §139.12(c) should be revised as follows (text to be added denoted in **bold underline**):

“Compliance with a particulate matter, **PM-10, or PM_{2.5}** emission limitation issued by the Department prior to January 1, 2011 will not be based on condensable particulate matter unless required under the terms and conditions of a plan approval, operating permit or the State Implementation Plan codified in 40 CFR 52.2020 (relating to identification of plan).”