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June 26, 2014

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

Re: Comments of Magnesita Refractories Company on the Pennsylvania Environmental Quality Board's Proposed Rulemaking, "Additional RACT Requirements for Major Sources of NO_x and VOCs," 44 Pa. Bulletin 2392 (Apr. 19, 2014).

Dear Sir or Madam:

Magnesita Refractories Company ("Magnesita") respectfully submits these comments on the Environmental Quality Board's ("Board") proposed "Additional RACT Requirements for Major Sources of NO_x and VOCs," published at 44 Pa. Bulletin 2392 (Apr. 19, 2014). Magnesita produces refractory materials used primarily in steel, cement, and glass manufacturing, as well as in other industries. Magnesita operates a facility in York, Pennsylvania, that uses dolomite from its on-site quarry in West Manchester Township to manufacture refractory bricks. The refractory bricks are suitable for high temperature applications, such as for use in steel mills to line vessels containing molten materials. To process the main raw material for the bricks, the facility uses two rotary kilns that burn raw dolomite at very high temperatures. In this way, the facility's manufacturing operations are unlike most other segments of the refractories manufacturing industry, which tend to operate at lower temperatures than Magnesita's facility and that do not use the type of dolomite that supplies the facility.

1. The Rule Should Balance the Need for Case-by-Case Consideration of RACT with the Efficiency Offered by Setting Presumptive RACT Requirements.

Pennsylvania regulations define "reasonably available control technology" ("RACT") as "[t]he lowest emission limit for VOCs or NO_x that a *particular source* is capable of meeting by the application of control technology that is reasonably available *considering technological and economic feasibility*." 25 Pa. Code § 121.1 (emphasis added). This definition mirrors in all material respects the definition of RACT used by EPA. *See* 44 Pa. Bulletin at 2392 (Apr. 19, 2014) (citing 44 Fed. Reg. 53762 (Sept. 17, 1979)). This definition of RACT makes clear that determining the appropriate emission limit for a particular source will depend upon features of the "particular" source, and will consider both cost and technological feasibility. Thus, there is a significant component of RACT analysis that depends upon the specific features of a given source and the particular cost effectiveness of reducing emissions from that given source. Still, if case-by-case determinations are necessary for substantially large numbers of sources, the risk increases for inconsistent determinations, conflicting guidance, and regulatory



delays. Therefore, it is important in this rulemaking for the Board to balance the need to accommodate the specific circumstances that apply to any individual source subject to RACT and the source-specific considerations that are part of a RACT determination, on the one hand, with the need for clear, consistent guidance to industry and the public so as to avoid inequitable applications of the rules to favor certain individual sources over others, on the other hand.

The Board has proposed a rule that appropriately seeks to navigate this balance, with (i) a mix of presumptive RACT limits and requirements for relatively uniform source categories for which control technologies or strategies are well understood and common, and (ii) use of a case-by-case approach for sources that are less common in design or operation or that may require a more case-specific consideration of the availability and cost effectiveness of control options. For example, presumptive RACT requirements for boilers, combustion turbines, and engines set requirements for categories of sources which represent a substantial portion of the sources that will be subject to RACT requirements. This approach promotes efficiency by presumably reducing the administrative burden and costs associated with submitting and reviewing individual RACT applications for these common sources with commonly applied control technologies. At the same time, the Board is right to recognize that individual sources in these categories may warrant particular consideration and to provide a mechanism for case-by-case consideration in the event a presumptive limit would not be appropriate for a particular source. Moreover, the Board is right not to establish presumptive limits for source categories that are relatively rare and for which RACT cannot be readily determined without a close review of the particular source. It would not be equitable or efficient for the Board to establish presumptive RACT requirements for these sources.

2. Emissions Averaging Offers Important and Appropriate Flexibility to Sources, but the Regulations Should Clarify that Sources Not Subject to Presumptive RACT Requirements May Also Avail Themselves of the Averaging Option.

Magnesita also supports the Board's proposal to allow facility-wide and systems-wide NO_x emissions averaging to achieve RACT emission limitations. This approach offers the potential for larger emission reductions for a lower overall cost than would be achieved through control of individual sources, and thus promotes compliance on a more efficient and effective basis. In this regard, the proposed rule requires sources that average emissions to achieve a 30-day rolling average that is no greater than 90% of the sum of the NO_x emissions that would be emitted if each source were emitted individually.

Averaging also is appropriate because the effects of ozone pollution are dispersed over a large area, and are not just local. NO_x and VOCs emitted in one location are transported downwind, or form ozone that is transported downwind, impairing air quality in locations well beyond the immediate or neighboring area of the source of those pollutants. *See, e.g.,* 76 Fed. Reg. 48208, 48209 (Aug. 8, 2011). Both Congress and EPA, respectively, have recognized the broader, rather than purely local, effects of NO_x emissions and ozone pollution, through (i) formation of the Ozone Transport Region through the federal Clean Air Act, and (ii) promulgation of the Cross State Air Pollution Rule to address emissions of NO_x in upwind states that interfere with air quality in downwind states. *See* 42 U.S.C. § 7511c; 76 Fed. Reg.



48208. Reductions of NO_x in one location in the Commonwealth can help improve air quality throughout the Commonwealth. Thus, allowing sources of NO_x under common control to average their emissions is an appropriate mechanism for measuring compliance with RACT requirements for NO_x emissions.

Further, emissions averaging is widely used to ensure compliance with air regulations, and courts have recognized averaging often is appropriate and reasonable. For example, in the recently promulgated Mercury and Air Toxics Rule, EPA allowed electric generating units to comply with new emissions limitations for their emissions of hazardous air pollutants by averaging emissions among affected sources. *See* 77 Fed. Reg. 9304, 9384 (Feb. 16, 2012); 40 C.F.R. § 63.10009. Even without a discount factor, the emissions averaging approach has been upheld in Court challenges. *See, e.g., White Stallion Energy Center, LLC v. EPA*, 748 F.3d 1222, 1252-54 (Apr. 15, 2014). Several other air regulations allow for emissions averaging, including the Department's own existing general RACT requirements which do not include any discount factor, as well other states' RACT requirements for NO_x emissions. *See, e.g.,* 25 Pa. Code § 129.94; New York Comp. Codes R. & Regs. tit. 6, § 227-2.5; Ohio Admin. Code 3745-110-03(I) The Board has reasonably concluded that emissions averaging enables sources to achieve the required emissions reductions—perhaps even more than is required—for the lowest cost and in the most efficient manner possible.

Magnesita recommends one change to the emissions averaging provisions, however, to clarify that sources that are required to submit a case-by-case RACT application pursuant to proposed § 129.99(b) or proposed § 129.99(c) may also choose to comply through an emissions averaging plan that satisfies the conditions of § 129.98 for such plans. An owner or operator of a source that does not fall within a presumptive RACT requirement of § 129.97 but that meets the requirements of § 129.99(b) or 129.99(c) for potential to emit NO_x or VOC, respectively, must submit a case-by-case RACT proposal in accordance with § 129.99(d). As presently drafted, these provisions do not make clear that such sources for the same reasons may avail themselves of the emissions averaging provisions of § 129.98 to propose a plan for compliance through averaging across multiple covered sources. Therefore, Magnesita requests that the Board clarify in the final rule that owners and operators of multiple sources that are subject to RACT requirements but are not subject to presumptive emission limits may also use emissions averaging to comply.

3. The Proposed Rule Reasonably Excludes Very Small Sources.

Magnesita also supports the Board's decision to exclude certain very small sources from RACT requirements, in particular those that are not subject to presumptive RACT requirements and have the potential to emit less than 5 tons per year of NO_x. These small sources do not emit NO_x that contribute in a meaningful way to ozone pollution, and the costs of imposing RACT analysis and emissions control requirements on these sources in all likelihood exceeds any minimal benefit that might be derived from those requirements.



4. The Final Rule Should Allow as Proposed Up to Three Years for the Installation of Controls if Necessary to Achieve a RACT Emission Limitation, and the Time Period Should Not Run Until the DEP has Approved the RACT Emission Limitation.

The Board should include in the final rule a process for a source to be allowed up to three years to install controls if necessary to comply with an applicable RACT emission limitation. A three-year period for compliance is provided in many air pollution regulations, is consistent with good engineering practice, and reflects the considerable lead time necessary to identify an appropriate control technology, procure the components of the controls, install the controls, and make appropriate adjustments to ensure that the emissions limitation can be achieved without preventing the source from operating for its intended purpose. The Board has proposed a reasonable process for ensuring sources that need time to install controls may obtain up to three years to do so (or even longer, if justifiable), and the Board should include such an approach in the final rule.

However, as proposed, the Rule could leave sources that must install controls and sources subject to a case-by-case RACT determinations without sufficient time to take steps necessary to install equipment or otherwise modify the source to achieve a RACT requirement, because it sets the compliance period from the date of the Rule being finalized rather than the date that the applicable RACT requirement is determined. For example, a source that is not subject to a presumptive RACT requirement might submit a case-by-case application proposing a particular emission limitation or requirement, but under § 129.99(f) would need a plan approval or operating permit modification before it can make the adjustments necessary to achieve the case-specific RACT requirement. That is, DEP must approve the application and issue a plan approval before the source knows what its compliance obligations are and how it will achieve them. DEP's review of a RACT application may take several months or more, significantly cutting into the time that the regulations would otherwise provide for compliance for sources that need it. Sources that submit reasonable RACT applications should not be penalized when the timing for approval reflects a lengthy DEP review. Thus, the Board should account for this risk when it finalizes the Rule. The Board can do so by requiring compliance within an appropriate time period from the approval of a RACT application, rather than from the effective date of the adoption of the Rule, as was the case in the RACT I program at § 129.91(f).

5. The Board Should Clarify the Presumptive RACT Requirement of § 129.97(g)(4) for Units Firing Multiple Fuels Simultaneously.

The Board should clarify the sources to which the proposed presumptive RACT requirement set forth in § 129.97(g)(4), for a unit firing multiple fuels simultaneously, applies. Given the location of this provision, it appears the Board intends that "unit" would mean a unit that falls within one of the other numbered subparagraphs of § 129.97(g) were it to fire just one type of fuel, *i.e.* a combustion unit or process heater, a combustion turbine, or a stationary internal combustion engine. Magnesita understands the intent of the Board's proposal in subparagraph (g)(4) to provide a method for one of these types of sources to calculate an appropriate emission limitation when it fires multiple fuels, rather than just one fuel. However, the Board should clarify that subparagraph (g)(4) does not apply to a source that happens to fire



multiple fuels but does not otherwise fall within a source category of § 129.97(g)(1)-(3) or another source category for which a presumptive RACT limit would apply, and is not intended to cover a source that would be subject to a case-by-case determination under § 129.99(b) were it to fire just one fuel type.

6. The Rule Should Not Impose the Costs of the SIP Amendment Process on the Sources for Which EPA is Not Setting Presumptive RACT Requirements.

Finally, for any source not subject to a presumptive RACT requirement or limit but required to submit a case-by-case RACT proposal under § 129.99(b) or § 129.99(c) or both, section 129.99(h) of the Rule would impose the costs of any public hearing and notification required for EPA approval of a state implementation plan amendment on the owner and operator of the facility. This provision imposes regulatory costs on the entities that are required to submit case-by-case RACT applications solely because those sources do not fall within a presumptive RACT source category, without correlative costs for most of the sources that will be subject to the final Rule. In this way, the proposal unfairly treats sources for which the Department requires a case-by-case submission.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin Bucks".

Justin Bucks
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