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Environmental Quality Board
P.O. Box 8477
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101-2301

June 26, 2014

RE: Comments on Proposed Additional RACT Requirements for Major Sources of NOx and VOCs

Dear Members of the Environmental Quality Board,

The Pennsylvania Chamber of Business and Industry (PA Chamber), the largest, broad-based business advocacy group in the Commonwealth, appreciates the opportunity to submit comments on the above-referenced proposed "RACT II" rulemaking. For the past several decades, the Chamber has been actively involved in issues relating to the stewardship of the environment, in particular regarding the appropriate regulation of sources that produce air emissions. On behalf of our members, the Chamber has brought the perspective of the regulated community to the development and refinement of various regulatory and policy issues relating to air quality. The Chamber also recognizes and appreciates the considerable efforts of the Pennsylvania Department of Environmental Protection staff in developing these proposed requirements, as well as the members of the Environmental Quality Board's time in fully considering the Chamber's comments and concerns.

Enclosed with these comments is a one-page summary for distribution as described in Section J of the preamble to the proposal.

The Flexibility Features Provided in the Proposed Rule Are Important to Retain

The proposal clearly demonstrates an intent to balance the efficiency provided through the use of presumptive RACT emission limitations and standards for particular categories of sources with the flexibility afforded by allowing for case-by-case RACT determinations for sources that do not fit well within those categories. This opportunity for case-by-case RACT evaluation is important to account for a source's particular design, raw material or operating characteristics that would otherwise be difficult to accommodate in requirements applicable to multiple sources. We expect that certain of the Chamber's members will find RACT compliance and program goals more readily attainable based on a case-by-case assessment.

We also believe that the averaging provisions in the proposed rule sensibly pursue balancing environmental and economic efficiency goals. The ozone regulatory program affirms through its

establishment of the Ozone Transport Region that transport of pollutants over distance is a key feature contributing to ambient ozone concentrations. In that respect, it is even more apt to conclude that emissions averaged across commonly-owned sources, as well as sources within the same facility, can be expected to produce equivalent environmental impacts with lower control costs. This point applies even for facilities that do not fall within any of the presumptive RACT categories, and even without the added limitation that the cumulative RACT limit not exceed 90% of the sum of individual RACT limits of participating sources. In fact, no justification for requiring a 10% take-away is provided for use of the averaging provisions. The 10% penalty may serve as a disincentive for many to choose the presumptive-based RACT average over use of “case-by-case” alternative RACT compliance plan, and therefore should be eliminated. The Chamber also asks that the proposed rule clarify the use of the term that an alternative compliance plan can be used if an averaging plan cannot be used. If the intent of the term “cannot” means that a facility must first prove it “cannot” use an averaging approach, this is an unworkable requirement requiring an indeterminable demonstration that it cannot use a multi-source average. The expressed intent is to provide options for facilities, not regulatory hurdles that such a demonstration would present.

Another clarification in the proposed rule is needed with regard to sources utilizing continuous emission monitoring systems (“CEMS”) to demonstrate compliance. As currently drafted, Section 129.100(a) of the Proposed Rule does not expressly provide that a source subject to a RACT standard based on a case-by-case analysis would be able to demonstrate compliance over a 30-day rolling average. RACT standards established for alternative compliance schedules are listed, but the alternative RACT proposals also listed in Section 129.99 is not listed in 129.100(a). The Chamber requests that the RACT regulation be revised to clarify that any source utilizing a CEMS to demonstrate compliance with *any* established RACT standard would be allowed to demonstrate compliance as a thirty-day rolling emissions average.

Flexibility is also key in allowing affected facilities the opportunity to adjust compliance schedules for achieving RACT limitations to accommodate feasibility considerations. As a practical matter, the timing for accomplishing modifications to achieve revised RACT limitations may turn on matters such as timetables for equipment availability, delivery and test-out; facility maintenance shut-down schedules; or turnaround times for RACT plan review by Pennsylvania’s Department of Environmental Protection (“DEP”).

The proposed regulations also sensibly exclude from RACT II requirements coverage for smaller VOC or NO_x-emitting sources or units. This makes sense both from an environmental standpoint, where the impact from smaller sources can be expected to be negligible, and from an administrative efficiency standpoint, by focusing the finite resources of regulators and regulated parties on the sources that matter most.

The foregoing discussion provides specific examples of areas in the proposed regulations that the Chamber believes are well-served by providing flexibility in terms of compliance rules and program administration while still fostering accomplishment of environmental protection goals. Indeed, the Chamber is generally supportive of incorporating this kind of flexibility wherever possible as these regulations are finalized.

Other Recommendations for the Final Rulemaking

The proposed rulemaking frequently sets timetables for achieving specified compliance steps using the final rule’s effective date as the starting point for the specified timetable. The Chamber believes

that this approach overlooks the point that in many instances an owner/operator's compliance obligations will not be defined until the Department approves a proposed RACT plan. The more feasible and fair approach would be to have any specified compliance time frames begin to run from receipt of the Department's approval, particularly since it remains unclear at this point how the number of case-by-case RACT proposals will match the Department's capacity to process them. Having these timetables run from the receipt of Department approval would be consistent with the approach adopted for the RACT I program in the mid-nineties at 25 Pa. Code § 129.91(f).

The Chamber also believes that it is not appropriate for these regulations to require that an owner/operator receiving Department approval for a case-by-case alternative RACT emission limit be required to bear the costs of public hearings and notifications required for such a limit to obtain required EPA approval as a State Implementation Plan revision. It does not seem equitable to require an individual regulated entity to pay on top of its compliance costs for activities which are statutorily imposed on a state agency, particularly without accompanying statutory provisions expressly imposing that obligation.

Conclusion

The RACT limitations and attendant requirements otherwise applicable to individual categories of sources, or individual sources themselves, are outside the scope of those general comments on behalf of the broad range of Chamber members. These inherent differences between individual sources and source categories provide further reason for incorporating flexibility into the application and administration of the RACT II regulations as they are finalized. The Chamber encourages the continued and even enhanced employment of flexibility in this context.

Sincerely,



Gene Barr
President and CEO
Pennsylvania Chamber of Business and Industry

Enclosure

**SUMMARY OF COMMENTS FROM
PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY
RE: PROPOSED ADDITIONAL RACT REQUIREMENTS
FOR MAJOR SOURCES OF NO_x AND VOCS**

June 30, 2014

The Pennsylvania Chamber of Business and Industry (PA Chamber), the largest, broad-based business advocacy group in the Commonwealth, appreciates the opportunity to submit comments on the above-referenced proposed “RACT II” rulemaking. For the past several decades, the Chamber has been actively involved in issues relating to the stewardship of the environment, in particular regarding the appropriate regulation of sources that produce air emissions. On behalf of our members, the Chamber has brought the perspective of the regulated community to the development and refinement of various regulatory and policy issues relating to air quality. The Chamber also recognizes and appreciates the considerable efforts of the Pennsylvania Department of Environmental Protection staff in developing these proposed requirements, as well as the members of the Environmental Quality Board’s time in fully considering the Chamber’s comments and concerns.

The Chamber’s comments support maintaining and even enhancing the flexibility provided for compliance with and administration of these proposed regulations to comply with updated reasonably-available control technology (“RACT”). Examples of flexibility in the proposed rulemaking that should be maintained include the following:

- balancing the efficiency of presumption RACT emission limitations for categories of sources with opportunities for case-by-case RACT demonstrations;
- providing opportunities for emissions averaging as a method of demonstrating RACT compliance for any covered RACT sources under common control;
- affording opportunities to adjust compliance schedules to reflect practical considerations; and
- excluding small sources from coverage by RACT requirements.

In addition, the Chamber advocates the following:

- starting compliance timetables at the time a proposed RACT plan is approved (as has been the case under existing RACT regulations), rather than as of the effective date of the final regulations;
- eliminating the 10% “take-away penalty” for emissions averaging;
- clarifying that any source utilizing a CEMS to demonstrate compliance with *any* established RACT standard would be allowed to demonstrate compliance as a thirty-day rolling emissions average; and
- not imposing the cost of required public hearings and notifications in connection with necessary State Implementation Plan revisions on owners/operators seeking case-by-case RACT plan approvals.