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Pennsylvania Chemical Industry Council
Your Advocate for the Business of Chemistry

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June 30, 2014

Honorable E. Christopher Abruzzo, Chairperson
Secretary of Environmental Protection
16th Floor, Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

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Re: Proposed Revisions to 25 Pa. Code Chapters 121 and 129 – Additional RACT Requirements for Major Sources of NOx and VOCs; 44 Pa. Bull. 2392 (April 19, 2014).

Dear Chairman Abruzzo:

The Pennsylvania Chemical Industry Council (PCIC) submits the following comments regarding the proposed rulemaking to amend 25 Pa. Code Chapters 121 and 129 – Additional RACT Requirements for Major Sources of NOx and VOCs (the Proposed Rule). PCIC's members include many of the Commonwealth's chemical manufacturers, producers, distributors and marketers. PCIC's mission is to continually improve the business climate for the chemical and related industries through public policy advocacy, communication, and education. PCIC understands that the Department of Environmental Protection (DEP or the Department) is intent on promulgating this regulatory package as it currently stands; however, it is clear from the continued questions and legal concerns that the Proposed Rule is confusing and creates considerable uncertainty. For these reasons, PCIC urges the Environmental Quality Board (the EQB) to revise the Proposed Rule to clarify the language and address the issues described herein.

1. General Comments and Questions

As described in its Preamble, the Proposed Rule is being promulgated in response to the 2008 revision of the 8-hour ozone ambient air standard by the U.S. Environmental Protection Agency (EPA). In 2006, DEP submitted a State Implementation Plan (SIP) revision to EPA in which it sought approval of the RACT determinations previously made for 1-hour ozone standard as RACT for the revised 8-hour standard. EPA informally rebuffed this effort, requiring a reanalysis of sources for which DEP had previously determined that "no controls" represented RACT for the 1-hour ozone. While the Preamble notes that DEP conducted a generic RACT analysis in response to EPA's rebuff, there is no indication in the Preamble

how this generic RACT analysis led to the presumptive RACT requirements/emissions limitations set out in Section 129.97 or whether this translation is rationally related to compliance with the EPA standard.

While we understand that the “no controls” issue was central to the discussions between DEP and EPA, there has been no accommodation for those Pennsylvania sources that have already gone through RACT analysis and upon which RACT requirements/emissions limitations have already been imposed. These sources should not be a priority for the “RACT-2” process. In addition, our understanding of EPA policy is that those sources that have already installed air pollution control equipment as result of previous RACT are not required to install additional controls absent new information indicating otherwise. *See, e.g., 70 Fed. Reg. 71612, 71655 (Nov. 29, 2005); NRDC v. U.S. EPA, 571 F.3d 1245, 1253-55 (D.C. Cir. 2008).* PCIC believes that the Proposed Rule should be modified to incorporate this policy.

The Proposed Rule sets presumptive RACT requirements/emissions limitations for various sources, along with compliance timeframes and methods, an averaging option, and compliance alternatives. While PCIC appreciates the effort to provide some flexibility, the compliance timeframes provided in the Proposed Rule remain grossly inadequate. The Proposed Rule allows only 12 months for affected sites to comply with the presumptive requirements, and requires that proposals for alternative RACT requirements/emissions limitations be submitted within 6 months of its effective date, but generally still requires final compliance within 12 months from its effective date. If the RACT review determines that an “air cleaning device” must be installed, then the Proposed Rule allows for the submission of a proposed alternative compliance schedule, but final compliance must still be achieved within 3 years of its effective date. The Proposed Rule does not provide any additional time to accommodate the time necessary to submit the proposal or time spent awaiting agency approval. There is no allowance for the delays associated with petitioning. Should these deadlines be left as proposed, it will be extremely difficult (and perhaps even impossible) for the regulated community to comply with the Proposed Rule.

In contrast, EPA MACT regulations generally allow three years from the effective date of a final rule to install controls. In the case of MACT standards, there is generally no delay similar to that associated with the Proposed Rule’s permitting or petitioning processes. This approach is somewhat closer to reality. In our members’ experience, typical implementation time for capital expenditures projects is roughly 39-42 months. Specific steps likely to be needed (some of which, by themselves, generally take many months) are:

- Determining current emission levels (where these have not yet been adequately quantified);
- Identifying control options and specifications;
- Design, engineering and sourcing;
- Cost estimation and budgeting;
- Permitting;
- Approval of appropriations; and
- Procurement and installation of air pollution control equipment, including shakedown.

The Proposed Rule could potentially impact dozens of emission units at some PCIC-member facilities. Taking each unit through these steps within the timeframes in the Proposed Rule is highly unrealistic, especially considering the likely delays arising from the imposition of such additional workloads on already overloaded agency staffs. In addition, during the first round of RACT implementation, PCIC members found that the process, from proposal submission to receipt of approval of RACT limits, takes roughly 2½ years. Given current Departmental staffing levels and experience, PCIC believes that this round of reviews will take considerably longer. PCIC encourages the EQB to revisit these compliance timeframes and to extend them to provide realistic timeframes for implementation. PCIC believes that applying the 3 year overall compliance deadline to all RACT reviews would be a logical first step, but that the Proposed Rule should also be modified to tie the compliance deadlines to the Department’s approval of a RACT determination, not the final rule’s effective date.

Section 129.96 – Applicability

Section 129.96 sets out the basic parameters of the applicability of the Proposed Rule. Subsection (a) states that the Proposed Rule shall apply to certain major NOx and VOC emitting facilities existing on or before July 20, 2012. Subsection (b) states that the Proposed Rule shall apply to certain non-major NOx and VOC emitting facilities when the “installation of a new source or a modification or change in operation of an existing source” after that date results in the source or facility being classified as a major NOx and VOC emitting facility. While both of these subsections exclude those facilities with requirements or emissions limitations (or both) imposed by certain identified Pennsylvania regulatory provisions,¹ they both fail to exclude those facilities that have previously undergone RACT review and currently have permitted requirements and/or emissions limits. Because Section 129.96 does not exclude these sources, they would be required to undergo the RACT process once again.² The Department has already approved RACT for these permitted sources, and requiring facilities to re-submit them for RACT review would incur unnecessary time and expense. In addition, it is unclear what additional restrictions or controls may be required as a result of a second RACT review. The Department should amend the proposed Section 129.96 to exclude NOx and VOC sources that have already undergone RACT review and have resulting NOx and/or VOC limits or restrictions, unless new information indicates that a new RACT analysis is justified.

Section 129.96 also fails to exclude sources where a requirement or emission limitation, or both, has been established by federal regulatory programs that are not reflected in these state regulations. In practice, this leads to some illogical results. For example, the Proposed Rule would exclude VOC storage

¹ Specifically, those subject to 25 Pa. Code §§ 129.51—129.52c, 129.54—129.69, 129.71—129.73, 129.75, 129.77, 129.101—129.107 and 129.301—129.310.

² PCIC members report that some examples of these sources include equipment or building fugitive VOC emissions that implement audio/visual/olfactory (AVO) Leak Detection and Repair (LDAR).

tanks subject to 25 Pa. Code Sections 129.56³ and 129.57⁴ where there is a requirement or emission limitation or both, but it would fail to exclude VOC storage tanks that are currently regulated by 40 CFR Part 60 Subpart K-b.⁵ Depending on the capacity and vapor pressure of the vessel, these standards can include requirements more restrictive than Sections 129.56 or 129.57. The Proposed Rule should exclude sources that are subject to federal regulations have imposed a requirement or limitation, including those sources subject to 40 CFR Part 60 Subpart Kb.

Section 129.97 – Presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedules

Section 129.97 contains the presumptive RACT requirements/emissions limitations, set out by various source categories. The Section identifies, *inter alia*, a number of different boilers and combustors by fuel type, with different presumptive RACT requirements for each. It is not clear whether combustion units burning fuels other than those specifically listed are eligible for the presumptive RACT requirements/emissions limits. The Proposed Rule should be modified to provide presumptive RACT requirements/emissions limitations for such units.

PCIC has the following additional comments and questions regarding the wording and intent of this provision:

- Section 129.97(b): Does the site have option of complying with either (1) or (2), or is compliance with both required?
- Section 129.97(c): If no manufacturer’s instructions are available, does the site need to follow good engineering practices only?
- Section 129.97 (d): Is good engineering practice required for all combustion units and stationary engines? Is there a *de minimis* level? PCIC does not believe that it is appropriate to attempt to regulate very small engines (such as those in lawn maintenance equipment, light posts, portable water pumps and hydraulic pumps, and small generators) via the RACT program.

Section 129.98 – Facility-wide or system-wide NOx emissions averaging RACT operating permit modification general requirements

Section 129.98 contains emissions averaging provisions that are essential to the proper implementation of the Proposed Rule. For older units that already have RACT controls installed (such as

³ Storage tanks greater than 40,000 gallon capacity containing VOC.

⁴ Storage tanks less than or equal to 40,000 gallon capacity containing VOC.

⁵ Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced After July 23, 1984.

low NOx burners), incremental reductions are difficult to implement and cost prohibitive to achieve. Without emissions averaging provisions, facilities will be required to develop case-by-case RACT proposals for the majority of individual sources. Development of these detailed proposals requires significant time and effort not only by the facilities submitting them, but also by the agencies in their review and assessment of the proposals. After the detailed assessment, it is likely that, for those older units, there will be no additional cost effective technology available to meet a more stringent emissions limit. As such, significant time and effort would be spent with no benefit to the environment. Additionally, with emissions averaging provisions, the allowable emissions for facilities are actually lower with emissions averaging than with presumptive RACT requirements/emissions limitations due to the averaging calculations requiring a 90% reduction from the presumptive RACT limits.

Providing for facility-wide and system-wide emissions averaging is a critical strength of the Proposed Rule, benefitting both the environment and the economy. There are, however, several issues that remain unclear in the Section. First, Section 129.98 fails to allow for averaging to be used with respect to VOC emissions. This is a major weakness in the Proposed Rule. Second, Section 129.98(m) seems to intend to create liability for operating a source in violation of the averaging provision, but the language fails to actually describe the actions that create such liability. While it does describe that the violation is “at that source or other source in the operating permit modification,” it is difficult to understand how this description will impact enforcement as a practical matter. Third, Section 129.98 is unclear how the 30-day rolling average compliance period is to be established and compliance demonstrated. The Section should be modified to provide more detail on this point.

Section 129.99 – Alternative RACT proposal and petition for alternative compliance schedule

Section 129.99 sets out the mechanism for those facilities that cannot meet the presumptive RACT requirements/emissions limitations and also cannot participate in the averaging option of Section 129.98 to propose alternative RACT emission limitations. For some facilities, this provision may clearly be the only viable option to comply with the Proposed Rule. The Section, however, fails to specify the precise method by which an applicant can demonstrate the inability to comply with the presumptive RACT requirements/emissions limitations and the standard of review. Because of this, the proposal process may add unnecessary delay to the RACT review, depleting the time available for the final compliance demonstration. PCIC believes that it would be more efficient to open the alternative RACT emissions limitations to any facility, not just those that demonstrate an inability to comply with the presumptive RACT requirements/emissions limitations and to participate in the averaging option.

Section 129.99, as written, requires an applicant to demonstrate to the Department that it cannot participate in the averaging option, with no standard of review, in order to qualify for the alternative RACT emissions limitations. If the EQB decides not to revise Section 129.99 to open it to any facility, the Section should at the very least be modified to remove the requirement that an applicant is not be eligible to participate in the averaging option. If the averaging option is truly to be optional, an applicant should be able to choose whether or not to participate and it is not appropriate to condition the alternative RACT

on eligibility for the averaging option. This Section should be modified to make eligibility for alternative RACT emissions limitations turn on whether an applicant elects to participate in the averaging option, not whether it is able to participate.

The Department is to approve, deny or modify the alternative RACT proposal in writing through the issuance of a plan approval or an operating permit modification prior to the owner or operator implementing the alternative RACT emission limitation. The Proposed Rule should be revised to acknowledge that modifications of the alternative RACT proposal will not be made without input from the applicant.

In addition, Section 129.99(b) and (c) impose the alternative RACT proposal requirement on VOC and NO_x air contamination sources at major VOC and NO_x emitting facilities (respectively), with certain potential emission rates equal to or greater than identified tons per year (tpy), if they are not otherwise subject to Section 129.97 and Section 129.201 - 129.205 (for NO_x sources). The term, "air contamination source," however, is broadly defined in 25 Pa. Code Section 121.1 as: "Any place, facility or equipment, stationary or mobile, at, from or by reason of which there is emitted into the outdoor atmosphere any air contaminant."

This definition becomes problematic when utilized in Section 129.99(b) and (c) because the Proposed Rule fails to provide clear direction on how the Department will apply the definition of "air contamination source" in this context. Does the potential emission rate of equal to or greater than the identified tons per year apply to each individual piece of equipment (*e.g.*, tank, building, oxidizer)? In some cases, operating permits group individual equipment as part of a single process. For example, multiple vessels and equipment grouped as part of a manufacturing process; storage vessels used in wastewater treatment; and raw material storage tanks grouped together as a single source in a permit. Because the groupings of equipment can vary from one permit to another, it would be more consistent to have the criteria apply to each individual piece of equipment and clarify this in the Proposed Rule.

PCIC has the following additional comments and questions regarding Section 129.99:

- Does Section 129.99(b) apply to boilers using fuels other than those listed in Section 129.97?
- Does Section 129.99(b) apply to small boilers without numerical emission limits listed elsewhere in the regulation? For example, 129.96(g) mandates numerical NO_x emission limits for combustion units and process heaters with heat input great then 50,000,000 BTU/hr. Would the owner of a boiler with less than 50,000,000 BTU/hr heat input also need to determine its NO_x potential emissions rates to determine if it might be covered under 129.99(b)?
- Does Section 129.99(c) apply to combustion sources only or to all VOC sources?

Section 129.100 – Compliance demonstration and recordkeeping requirements

Section 129.100 sets out the various requirements for compliance monitoring (including a waiver provision) and record-keeping. As an initial matter, the compliance timelines set forth in Section 129.100(b) and the deadlines for submission of a waiver request in Section 129.100(c)(1) are too short; facilities will be examining the applicability of the Proposed Rule to its equipment, and will likely not be able to perform that task and also have the ability to manage toward the deadlines set forth in this Section.

PCIC has the following additional comments and questions regarding Section 129.100:

- Section 129.100 states that compliance for each source subject to RACT limits is to be demonstrated through CEMS or source testing. The Proposed Rule should provide that engines that are EPA certified for the New Source Performance Standards (40 C.F.R. Part 60 Subparts IIII and JJJJ) comply with RACT without resort to CEMS or source testing. The use of an EPA certified engine should be sufficient to demonstrate compliance with RACT emission limitations.
- When demonstrating compliance via CEMS, is the compliance demonstration continuous or only required one time? If the intent is for CEMS to be used to continuously to demonstrate compliance, how will compliance be tracked (especially if multiple fuels are being burned)?
- How are units combusting fuels other than those listed regulated to demonstrate compliance? Without more direction, it appears that these would need to undergo case-by-case RACT.
- What is the applicability to engines used by third parties on site?

Conclusion

The members of PCIC appreciate the opportunity to comment on the Proposed Rule and urge the EQB to revise it to address the comments and questions set forth herein. PCIC also supports the comments on the Proposed Rule submitted by the Pennsylvania Chamber of Business and Industry.

Sincerely,

s/ Sarah Battisti

Sarah Battisti
President