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OSRAM SYLVANIA

June 27, 2006

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

Re: Proposed Nonattainment New Source Review Rulemaking

Dear Environmental Quality Board:

OSRAM SYLVANIA Products Inc. (OSPI) submits the following comments to the proposed Nonattainment New Source Review (NSR) rulemaking published at 36 Pa. Bull. 1991 (April 29, 2006). In general, OSPI supports either of two approaches: (1) maintain the current program based on a "potential-to-potential" test; or (2) revise the NSR program to be completely consistent with the revised federal NSR rules. The proposal mixes the current program with some of the new concepts to create what we believe will be a confusing and unfriendly system for determining NSR applicability. If the Environmental Quality Board (EQB) proceeds with the NSR rulemaking to replace the current "potential-to-potential" test, OSPI offers the following comments.

1. As a general matter, we believe the proposal is unnecessarily more stringent than the federal program. We suggest that the EQB instead, adopt final rules that track the federal program, including the option of incorporating them by reference, for several reasons. First, SIP approval will be considerably easier if the federal program is adopted. Second, the PSD program in Pennsylvania will closely match the NSR program which will simplify the permitting process for both the regulated community and DEP. Finally, as indicated in the proposed preamble, section 4004.2(b) restricts the EQB's rulemaking authority with respect to requirements that are more stringent than required by the Clean Air Act. We do not believe a more stringent NSR program is necessary to achieve and maintain the NAAQS. The simple declaration in the preamble that a more stringent NSR program is necessary to attain and maintain the NAAQS appears to be insufficient to meet the demonstration that the Pennsylvania legislature intended in order for the EQB to adopt more stringent regulations.

2. The EQB requested comment on the "look-back" provision for determining the baseline. As indicated, we support the 10-year look-back provision consistent with the federal program. In addition, we note that the preamble states that "regulated entities . . . may choose any 2 consecutive years in the preceding 5 as their baseline." 36 Pa. Bull. 1991, 1993 (April 29, 2006). However, the proposed regulation

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requires the use of the 2 consecutive calendar years immediately prior to the application with a discretionary option whereby "the Department may allow the use of a different consecutive 2-year period within the last 5 years upon a determination that it is more representative of normal operation." 36 Pa. Bull. 2005 (proposed 25 Pa. Code 127.203a(a)(5)(i)). We suggest the mandatory 10-year look-back but if the EQB proceeds with a 5-year look-back, the rule should provide for a mandatory 5-year look-back period with the option to allow for another 2-year period in the last 10 years if such period is more representative of normal operations.

3. The EQB also requested comment on the look-back provision for PALs. We also support the 10-year look-back provision as indicated for the baseline period.

4. The provisions regarding the establishment of an emissions limit (see 127.203a(a)(6) and 7) are not only more stringent than federal equivalent but are confusing. The federal approach of recordkeeping and reporting is sufficient to ensure compliance. If the EQB proceeds with an emission limit approach, then 127.203a(a)(6) and (7) should be clarified. First, it is unclear whether the emission limit must be established prior to beginning actual construction on the project. We oppose any procedural requirements (*e.g.*, obtaining a plan approval) that would delay projects and hamper operational flexibility. Second, the numerical limit that would be established based on the regulations is unclear. It appears to be equivalent to the pre-change "potential-to-emit" (PTE) plus any increase in the PTE attributable to the project. We suggest that these provisions be clarified or explained if they are not deleted.

5. The Pennsylvania rules should not provide for aggregation of less than significant emission increases. The proposed NSR rules apply to a "net emissions increase" while federal rules provide for a two-step process (first, determine if the project itself results in a significant emissions increase; second, if it does, determine whether the net emissions increase is significant). Requiring aggregation of small projects is inconsistent with and more stringent than the federal program. We suggest that the EQB not promulgate final rules with the aggregation requirement. It is our understanding that the EPA will soon be publishing a proposed NSR rulemaking to address aggregation. Pennsylvania should await that rulemaking prior to including any aggregation requirement. Moreover, we do not believe that a 15 year "contemporaneous" period is appropriate for "de minimis emission increase." If anything, a 5-year period is sufficient.

6. The existing aggregation provisions and some of the definitions from the current rules do not fit with the new actual-to-projected actual test for determining emission increases. For example, the phrase "de minimis emission increase" is defined based on an increase in "actual emissions" or the "potential to emit." It would seem to make sense that the de minimis concept be based on the new actual-to-projected actual test. While we believe the concept of aggregation should not be included, if it is, the EQB needs to reconcile some of the old concepts with the new actual-to-projected actual test.

7. We request clarification of section 127.205(1) relating to LAER requirements and how LAER applies in the aggregation context. The proposed rule requires a modified facility subject to NSR to comply with LAER "except as provided in 127.203a(a)(4)(ii)(B)." The cited section does not exist. We believe that the appropriate cross reference may be 127.203a(a)(4)(iv). While section 127.203a(a)(4)(iv) itself needs to be clarified, we believe that the intent is to require "de minimis" projects to be aggregated and the entire "net" increase be offset once the aggregated smaller projects trigger the significance threshold. However, LAER need not be applied to any "de minimis" or less than significant project. While we do not support the aggregation concept, if it is retained, the LAER applicability provisions need to be clarified. In addition, the new sentence added to the end of 127.205(1) should be deleted. It appears to require LAER for "less than significant" projects if these projects are "directly related to and normally included in the project . . ." This provision invites debate and creates additional uncertainty in an already confusing and uncertain regulatory program. It is more stringent than the federal program and should be deleted.

8. The cross reference to "paragraph (6)(i)" in 127.203a(a)(7) should probably be to "paragraph (6)(iii)."

9. The 100 lb/hr and 1,000 lbs/day thresholds in the definition of "significant" for NOx and VOCs should be deleted. These short term thresholds are more stringent than the federal program and simply serve to further complicate NSR. To the extent that the EQB retains these triggers, it should explain the reason for them and the necessity for them in attaining and maintaining compliance with the ozone NAAQS.

10. The EQB should clarify the scope of the pollutants regulated by the NSR rules. The rules include a new definition of "regulated NSR pollutant" which includes "precursors" of any pollutant for which a NAQQS has been established. The scope of such "precursors" should be clarified, particularly with respect to PM2.5. The rules refer to PM2.5 precursors in several places but do not define "PM2.5 precursor." It is noted that section 127.203(g) suggests an inclusive definition of PM2.5 precursors with a means of excluding a particular precursor if EPA or DEP determine that the precursor emissions do not contribute significantly to PM2.5 levels in a particular nonattainment area. We note that the EPA recently proposed rules regarding the regulation of VOCs, SO2, NOx and ammonia as PM2.5 precursors. *See* 70 Fed. Reg. at 65999 (November 1, 2005). We suggest that the EQB wait for a final rule from EPA on the PM2.5 precursor issue before attempting to establish a PM2.5 NSR program. If the EQB proceeds with the PM2.5 precursor rule, it should be following the EPA proposed rule which suggests that some of the PM2.5 precursors (*e.g.*, ammonia and VOCs) should not be regulated under NSR programs.

11. The proposed rules should not treat emissions from start-ups, shutdowns, and malfunctions differently under the definitions of "baseline actual emissions" and

"projected future actual emissions." The proposed rule are different and apparently more stringent than the federal rules in that section 123.203a(a)(5) indicates that emissions from start-ups and shutdowns are to be included in the baseline actual emissions only if they are "authorized" while the projected future actual emissions include emissions from startups and shutdowns regardless if they are authorized.

12. The phrase "begin actual construction" is defined but does not appear to be used anywhere in the substantive rules.

13. The term "actual emissions" is defined differently than the corresponding federal definition. For example, the federal rule does not require a more representative period to be determined in writing. The EQB should adopt the federal definition.

14. Clarify section 127.203(c)(2) is intended to apply the NSR requirements to a "major facility" that has been deactivated for a year or more but does not comply with the reactivation requirements. As written, this provision is unnecessarily stringent because it applies to non-major facilities as well as major facilities.

15. The PAL recordkeeping and reporting provisions (127.218(n) and (o)) should be deleted and/or coordinated with the Title V recordkeeping and reporting provisions. The requirements for semi-annual reports and annual compliance certifications are duplicative of the Title V reporting requirements and arguably inconsistent (*e.g.*, deadlines for submitting semi-annual reports). We suggest that the Title V recordkeeping and reporting requirements are adequate to ensure that noncompliance situations are appropriately reported to the DEP.

16. Units constructed after the 2-year PAL baseline period are added to the PAL at a rate equal to the actual emissions of the unit. The federal rules provide for adding to the PAL for such units at a rate equal to the potential to emit. Section 127.218(f)(4) should be revised by changing "actual emissions" to "potential emissions."

17. The proposed rules require that emissions from any new source at a facility covered by a PAL must be the minimum attainable through the use of BAT. This provision is more stringent than the federal rules and should be deleted. The primary purpose of the PAL is to allow facilities flexibility. As EPA stated "the added flexibility provided under a PAL will facilitate your ability to respond rapidly to changing market conditions while enhancing the environmental protection afforded under the program." 67 Fed. Reg. 80186, 80189 (December 31, 2002). The EQB should promote the flexibility provided by a PAL. If new sources are required to apply BAT, and arguably to go through the plan approval process, the usefulness of a PAL is limited. Similarly, if an emission unit is "modified" as that term is used in the plan approval rules, the owner/operator arguably is required to go through the plan approval process before making any such change. In order to make the PAL provisions meaningful, the Pennsylvania rules must exclude new emission units and modifications from existing

units from not only NSR but also from plan approval requirements. Otherwise, the PAL provisions offer little, if any, additional flexibility. Facility owners/operators would be remiss to accept a PAL absent this flexibility. As the EPA recognized, "a PAL will allow you to make changes quickly at your facility. If you are willing to undertake the necessary recordkeeping, monitoring, and reporting, a PAL offers you flexibility and regulatory certainty." *Id.* The Pennsylvania proposal offers little, if any, flexibility, and no regulatory certainty in terms of the BAT and plan approval requirements for any changes under a PAL.

OSPI appreciates the opportunity to submit these comments and trusts that the EQB will make the necessary and appropriate revisions to the NSR rules before promulgating them as final.

Sincerely

Peter Croteau
Corporate EHS Manager