

PENNSYLVANIA CHEMICAL INDUSTRY COUNCIL

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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June 27, 2006

The Honorable Kathleen A. McGinty  
Environmental Quality Board  
Rachel Carson State Office Building, 15<sup>th</sup> Floor  
400 Market Street  
Harrisburg, PA 17105-2301

Dear Secretary McGinty:

On behalf of the members of the Pennsylvania Chemical Industry Council (PCIC), I offer the following comments in regards to Nonattainment New Source Review (NSR), #7-399 (#2535).

According to a February 8, 2006 DEP press release, you are quoted as saying the following about stationary facilities;

*"Forcing even more emission reductions on facilities that already shoulder a disproportionate share of the burden not only threatens good-paying jobs, but it also puts Pennsylvania at a greater economic disadvantage and makes our state a less attractive place for businesses deciding where to locate."*

PCIC concurs that industrial sources already shoulder a disproportionate burden in regards to emissions reductions, and it is for these reasons that PCIC advocates for a NSR regulation that alleviates the burden on Pennsylvania businesses without sacrificing air quality. With the increased operational flexibility offered through EPA's NSR revisions and the Air Pollution Control Act (APCA), both goals can be achieved.

PCIC asks that you take the following comments into consideration:

- **The five-year lookback in determining baseline emissions does not take into consideration the varying emissions levels of certain types of chemical manufacturers.** Section 127.203a requires that baseline emissions be calculated by the average of two calendar years taken within the last five upon a determination that is more representative of normal source operations. Depending on economic cycles and demand for certain products, chemical manufacturers can experience

significant variances in emissions from year to year. With the recent economic slowdown in consideration, it is highly unlikely that chemical manufacturers will be able to select any two-year period within the last five that represents normal source operations.

This is evidenced by emissions data, which PCIC requested from its members. One company, whose production was consistent until 2002, has cut NOx emissions by nearly a quarter due to a reduction in production. If this company institutes a change that increases its emissions by only three percent of its potential capacity, it will have triggered NSR for NOx. Another company has decreased VOC emissions by 36 percent in the last five years as demand for one of its products lessened. Because its baseline emissions will not reflect the capacity of the plant, this facility will have an artificially quick trigger for NSR.

The shortened lookback will be especially difficult for chemical manufacturers, which are heavily dependant on research and development. A manufacturer may reduce production as consumer demand wanes as a way to save energy consumption or create less waste. However, as important and potentially life-saving products are being finalized and tested, the facility will need to quickly react to changing market conditions to meet demand. The shortened lookback will not provide an indicative production period in order to properly establish an appropriate baseline.

Consider this potential scenario: Sanofi Pasteur in Swiftwater has been operating at a low production level, due to minimal customer demand. But the facility is able to respond to a developing pandemic by increasing flu vaccine production capacity at its plant. In order to do so, the facility would trigger NSR. It is PCIC's contention that to truly safeguard the public health, DEP should not involve important manufacturers in a time-consuming NSR review process. An increased lookback have the potential to prevent this unintended consequence.

Shutdown cycles of some manufacturers can also dramatically affect emissions data. Facilities with shutdown cycles of more than five years or more will not be able to include startup and shutdown emissions in the actual emissions baseline calculation in the event that a physical change is made. Petroleum refineries that have been out of operation for a number of years but have restarted due to market demand for low sulfur fuels and diesel will be negatively affected by the affect of startup emissions. Considering the recent demands for fuel in the southeast, these cycles should be factored when calculating the baseline.

While a five-year lookback will have a dramatic effect on certain companies whose production will fluctuate, we concede that many facilities operate at full capacity indefinitely due to market demands. In order to accommodate both types of facilities, PCIC suggests that Section 127.203a be amended with this in consideration. A ten-year lookback could be permitted for a certain classification of manufacturer, or the regulations could permit a ten-year lookback if the facility can prove a percentage of variance due to rise and fall in production.

- **The requirement for Best Available Technology (BAT) for a new source under a Plantwide Applicability Limit (PAL) removes a primary incentive for a PAL.** Section 127.218 outlines the methods by which a PAL permit will be negotiated and enforced. Section 127.218(6)(x) requires that all PAL permits must include a requirement that the emissions from a new source will be the minimum attainable through the use of BAT.

The primary purpose of a PAL is to allow facilities with multiple sources flexibility to offset an emissions increase from one source by decreasing or retiring another source, provided that facility stays under the numerical PAL. If a facility is required to install expensive BAT on any new source under a PAL, it removes this flexibility and will prove to be a detractor to any facility wishing to apply for a PAL.

According to Section 6.6(c) of the APCA, DEP is authorized, *but not required*, to demand that new sources demonstrate in the plan approval application that the source will reduce or control emissions of air pollutants, including hazardous air pollutants, by using the best available technology. There are safeguards in a PAL permit that discourage installing lesser technologies when constructing a new source. The PAL itself sets a capped emission limit that cannot be exceeded. A PAL may also include a percentage reduction that must be achieved upon the expiration of a 10-year period. These safeguards, and not prescriptive technologies, are more than adequate to address emission concerns, and do not remove the operational flexibility that should be available under a PAL.

- **Separate provisions for Advanced Clean Coal Generation Technology show an unfair preference to one particular segment of industry.** Subsection 127.214a provides separate standards for Advanced Clean Coal Generation Technology, deeming the steam generation unit to meet the LAER control technology requirements of 127.205 and expediting the plan approval application process for any steam generating unit under this subsection.

PCIC is in favor of encouraging the development and generation of all economic sources of energy, including renewable, clean coal, natural gas, nuclear, advanced technologies, and waste or waste derived fuels. But the segregation of this technology unfairly disadvantages other energy sources. If the environmental benefits of this technology have been proven, then clean coal generation providers do not need to have a separate standard, and should be able to more easily comply with the same regulations as its competitors. And by expediting permit approvals for electric steam generating units, other competing energy providers and related industries will be forced to endure longer wait times for permit approvals.

- **The separate definitions for the five-county Philadelphia area purport to retain the one-hour ozone standard, which is a violation of the Air Pollution Control Act (APCA).** Section 127.201(f) states that a facility located in the five-county Philadelphia area that emits or has the potential to emit at least 25 tons per year of VOC or NOx will be considered a major facility and is subject to the requirements

applicable to a major facility located in a severe nonattainment area for ozone, in spite of the fact that the area is considered in moderate nonattainment under the EPA-approved eight-hour ozone standard.

By assigning different standards to the five-county Philadelphia area, including redefining major facilities and assigning separate standards for VOC and NOx, the NSR regulations maintain the one-hour ozone standard. The regulation states in the preamble that "the proposed amendments are more stringent than those required under the Clean Air Act, they are necessary to achieve or maintain the National Ambient Air Quality Standard, and therefore permissible under Section 4.2(b)(1) of the APCA." If this assertion is true, PCIC asks that any modeling used to justify this be made public, as it will result in an economic drain on production capabilities for one particular part of the Commonwealth.

The more definitive language in the APCA appears in Section 4.2(c), which states, "The board may not by regulation adopt an ambient air quality standard for a specific pollutant which is more stringent than the air quality standard which the EPA has adopted for the specific pollutant pursuant to section 109 of the Clean Air Act." By maintaining the one-hour ozone standard in this regulation, DEP is adopting a more stringent air quality standard for a specific pollutant, ozone, than EPA.

In addition to the questionable legality of this separate standard under the APCA, PCIC asks that DEP take the following factors into consideration of the special permit conditions under Section 127.203(b)(1):

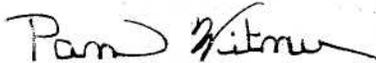
- The proposed rule, in Section 127.203(b)(1)(ii) will add a new 15-year emissions netting period to the NSR process. There is no explanation in the draft rule preamble justifying the addition of this process to NSR.
  - Many major facilities have installed or are in the process of installing BAT, BACT or LAER controls as a result of permitting or regulatory requirements. Sources from which offsets could be generated are becoming increasingly scarce. This will require an increased number of expensive pollution control devices. The end result will be that many projects will not be implemented in Pennsylvania, and economic growth in the five counties will be sacrificed.
- ***Mention of two-year period in definition of actual emissions in Section 127.201a, 127.203a and 127.218 constricts seasonal production.*** Many batch chemical manufacturers' production varies greatly, and may be either reduced for seasonal purposes or shut down completely for machinery testing and process review. Because of this, a two-year calendar period may not be reliable of normal production. PCIC suggests that this definition be amended to read "24 consecutive months."
  - ***Two-year existence period in definition of new emissions unit does not factor for "shakedown" period.*** Section 127.201a contains a definition of a new emissions unit "that has existed for less than two years from the date such emissions unit first operated." Many new, reconstructed or modified units do not

reach their normal operational capacity until a short shakedown period. Appendix S to Part 51, Emission Offset Interpretive Ruling, Section II(A)(6)(iv) indicates, "Any replacement unit that requires shakedown becomes operational after a reasonable shakedown period, not to exceed 180 days." Many plan approvals also include this 180-day shakedown period. PCIC recommends that a similar timeframe be included in this definition as well.

- **Section 127.205 refers to a section in the regulation that does not exist.** According to our reading, there is no Section 127.203a(a)(4)(ii)(B).

If you would like to discuss any of these points further, please feel free to contact me at any time. PCIC believes that there are elements of compromise that can be made in this regulation that will benefit both the environment and Pennsylvania's business climate. I request that DEP form a stakeholder process that discusses alternative approaches to some of the above concerns. The members of PCIC would be pleased to discuss any language amendments with you in order to ensure that all views are well represented. Thank you for your attention to this important matter.

Sincerely,



Pam Witmer  
President

Cc: The Honorable William Adolph, Pennsylvania House of Representatives  
The Honorable Bud George, Pennsylvania House of Representatives  
The Honorable Mary Jo White, Pennsylvania Senate  
The Honorable Ray Musto, Pennsylvania Senate  
The Independent Regulatory Review Commission  
PCIC Board of Directors  
PCIC Public Policy and Advocacy Committee

