Original: 2535

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Sent: Wednesday, June 28, 2006 2:02 PM
To: RegComments@state.pa.us
Subject: COMMENTS REGARDING NONATTAINMENT NEW SOURCE REVIEW (NSR)

Essroc Italcementi (Essroc) is providing comments to the Department regarding the proposed NSR regulations. We request that the Department seriously consider the significant issues raised by the Department's own Citizens Advisory Council and Air Quality Technical Advisory Committee and consider eliminating many of the numerous variations from the Federal NSR program. There may be areas in which Pennsylvania must differ from the federal program, but they should be kept to a minimum and should be justified by sound scientific data.

In addition, the ESSROC requests that you consider the following specific comments:

Baseline for Actual Emissions. The Department should use the ten year "look- back" consistent with the Federal NSR regulations rather than proposing a five year look-back. The purpose of the baseline determination is to arrive at a representative period from which to determine existing actual emissions. The purpose is not to try to insnare as many projects as possible into the NSR program. For many businesses, the downturn in a business cycle or demand for a particular product lasts longer than three years. In that event, "normal" operations may not have occurred during a consecutive two year period in the past five years. Moreover, some products or production units have been out of operation for a number of years due to economic or market conditions and are now reactivating production. This includes facilities producing such products as low sulfur fuels. Without the ten year look-back, a facility will not be able to select a period representative of "normal" operations. DEP's preamble states that a ten year look-back period decreases the possibility that NSR would apply. Stated another way, a five year look-back period increases the possibility that NSR will apply to emissions that otherwise would have been emitted under normal circumstances during that time frame.

As currently proposed (see 127.203a(a)(5)(i)), the DEP's proposed rule defaults to a strict 2-year look-back period. As currently worded, the Department would impose a 2-yr period for baseline emissions just preceding the receipt of a Plan Approval application. The 5-year look back period can only be invoked at the Department's discretion. This certainly creates the opportunity for arbitrary and capricious application on the use of the 5-year baseline emissions time period. In reality, this regulatory approach would appear to essentially leave no flexibility on the baseline emissions period despite the Department's advertisement to the contrary. Regulator discretion on selection of the time period that is representative is not a component of the federal NSR regulations and should not be part of the state's NSR program either. This paragraph, at a minimum, should be revised reflect similar language from the federal requirements and include the 10-year look-back period.

Consistent with the Federal NSR program, DEP should allow the use of a different two year period to determine the baseline emissions for each emission unit and each pollutant affected by a project. By requiring an entire facility to use the same two year period, complex facilities are penalized. Emissions of pollutants from different sources are dependent upon differing factors. Production of one product may be down while another is up. Production of these

products may emit different pollutants and should not be subject to the same two year period, remembering that the goal is to select representative emissions. Likewise, the Pennsylvania regulations require baseline emissions be based on a two calendar year period, rather than 24 consecutive months as the federal regulations allow. There is no explanation for this variation which once again makes the identification of a representative period more difficult.

Plant-wide Applicability Limits. PALs provide an excellent opportunity for operational flexibility. However, Pennsylvania's proposed regulations differ so much from the federal regulations that the benefits of a PAL are largely lost. First, as with the baseline determination, the PAL provisions only allow a five year look-back rather than the ten year lookback in the federal regulations. For the reasons noted above, the Department should allow for the ten year look-back. Secondly, the requirement that any new sources installed at a facility with a PAL must meet BAT negates considerable operational flexibility with no environmental benefit. The Department should allow facilities with a PAL to operate under the approved cap without mandating specific requirements for new or modified sources. Although the Department asserts that it must require BAT for new sources that is not accurate. Section 6.6(c) of APCA authorizes the Department to mandate BAT for new sources. It does not require that the Department do so. Sources with a PAL should be allowed to operate under the cap without additional restrictions. Third, all the same rules apply to PAL facilities as to other permit holders. These include the need for plan approvals, individual caps on large sources, need to prove data submissions with testing, reporting, etc. In short, Plant-wide Applicability Limitations are not a desirable carrot for industry in Pennsylvania.

Emission Reduction Credit (ERC) Generation. A facility making improvements that are classified as BAT would apparently be prohibited from generating ERC's per the proposed rule. In practice this will prohibit many sources from conducting emissions netting. Not to mention, the historic determination of BAT in the Department is frequently arbitrary meaning that even within the Department the regulation cannot be applied consistently with the Commonwealth. This provision should be removed from the proposed rulemaking. To counteract past practices by the Department, we also request the Department to clarify that BAT only applies to new sources, and not to existing or modified sources, based on the controlling definitions contained in 121.1.

De minimis Emission Aggregation Period. Not only do the Department's proposed regulations reduced the look-back period from ten years to five years, but they have also increased the period during which a source is required to aggregate de minimis emission increases from five years to 15 years. Again, there is no explanation for this three-fold increase in the aggregation period. DEP should maintain the five year aggregation period as it currently appears in the DEP regulations.

The lb/hr and lb/day de minimis aggregation thresholds are burdensome and should be eliminated. EPA does not require de minimis aggregation, let alone on a lb/hr or lb/day basis. Additionally, the lb/day value can be overestimated since some sources would not restrict hours/day and thus calculate a lb/day by using 24 hours. In actuality, a source may not operate the complete 24 hours/day. An emergency generator is a prime example - hours of operation per year will be limited, but hours/day will not be limited so that it can be run in an emergency. Actual run hours per year and per day for an emergency generator typically do not approach the permitted limits, thereby inflating the lb/day threshold.

Furthermore, it does not appear that the Department has fully recognized the effects of the proposed implementation of the short-term nonattainment NSR triggers (i.e., lb/hr or lb/day)

and the impact they would have under an actual-to- projected actual (or actual-to-potential) applicability testing versus the previous allowable to allowable applicability testing for existing sources. In short, the Department's past implementation of these short-term NSR triggers has been arbitrary and without specific regulation or guidance. Following this course of proposed regulation would undoubtedly lead to a difficult implementation that could significant hamper economic growth in PA.

Five County Philadelphia Area. Although EPA has designated the five-county area as moderate non-attainment for the 8-hour ozone standard, the Department's proposed regulations would change the threshold so that facilities in these counties continue to be treated as though the area was severe non-attainment for ozone. This differentiation will impose a substantial burden on a part of the state which has up to this point shown economic growth and will dampen that growth. Facilities in the five-county area have been subject to rigorous emission limits and permit standards over the past ten years and have made significant reductions in emissions. When combined with the 15 year aggregation requirement and the reduction of the look-back period to five years, the impacts on facilities in these counties will be severe. Under the proposed rules even small modifications could trigger LEAR and/or offset requirements. Many major facilities have or are in the process of installing significant control technologies (BAT or BACT) as a result of permitting procedures or regulatory requirements. Sources from which offsets could be generated are becoming scarce. Thus, very expensive add-on pollution control devices will be mandated by the Department's approach. The end result will be that many projects will not be implemented and economic growth in these five counties will be severely restricted. Moreover, the Department's justification for this disparate treatment seems to be based on its litigation position with EPA regarding the eight hour ozone standard. In essence, the Department is proposing a regulation that would continue the one hour ozone standard in Southeastern Pennsylvania. This is akin to creating a new and more stringent ambient air quality standard for ozone. Such an approach is clearly prohibited by Section 4.2(c) of the Air Pollution Control Act. Accordingly, the Department should drop the disparate treatment of the five-county area.

PM 2.5 Requirements. The proposed regulations prematurely incorporate PM 2.5 provisions into the regulations. Since EPA has yet to finalize the implementation rule for PM 2.5 and has indicated that the states should use a PM-10 program as a surrogate until those rules are finalized, Pennsylvania should follow that guidance. At present there is no reliable and accepted methodology for measuring PM 2.5 and neither DEP nor EPA has determined the pollutants considered to be PM 2.5 precursors. Including PM 2.5 in these regulations will only add to confusion and inconsistent application of these regulations across the Commonwealth.

PM-10 Threshold. The Department's regulations proposed to lower the threshold for sources subject to NSR from 100 tons per year to 70 tons per year of PM-10. No justification for this decrease has been provided. The 100 ton per year threshold should be retained. (Note: Per the Offset Policy (Appendix S), it appears that for *serious* PM10 nonattainment areas a 70 tpy major source threshold is appropriate. So, I believe that DEP's proposal is consistent with the federal approach.)

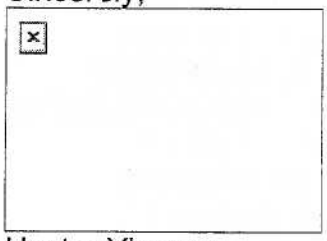
Section 127.205(1) cross-references 127.203a(a)(4)(ii)(B). We find no such section. The cross-reference should be corrected.

New Emission Units. The proposal considers emissions unit as "new" **2 years** from the date the new unit was first operated. According to 127.203a(6)(C) the intention of the 2-year period is to establish the baseline actual emissions. However many new, reconstructed or modified units do not reach normal capacity until a reasonable shakedown period. Appendix S to Part

51, Emission Offset Interpretative Ruling, Section II(A)(6)(vi) indicates that "Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days". Moreover, shakedown period is included in many plan approvals. The rule should include provisions allowing a shakedown period, instead of counting from the time the unit was first operated. To avoid the risk of having new regulations apply to an existing 2 year old unit (actually, more than 2 years may have elapsed from the time a unit is purchased and installed), the rule should clearly indicate that this applies only to the NSR-affected process.

Essroc appreciates the opportunity to comment on this significant issue. Essroc wants to be part of the solution not part of the problem, and we look forward to working with the PaDEP to develop an equitable and workable program, which will contribute to meeting PADEP's objectives.

Sincerely,



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