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April 12, 2010

VIA HAND DELIVERY

The Honorable John Hanger
Secretary, Department of Environmental Protection
Chairperson
Pennsylvania Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101

RE: Proposed NSR Permitting Regulatory Revisions Relating Largely to Fine Particulates

Dear Secretary Hanger:

On behalf of its membership comprising thousands of businesses of all sizes and across all industry sectors, the Pennsylvania Chamber of Business and Industry (Chamber) appreciates the opportunity to provide the following comments on the proposed revisions to Pennsylvania's New Source Review (NSR) air quality permitting requirements of Chapter 127. The Chamber has received a number of comments from our members over a wide spectrum of industry types, with one major concern and a few additional comments.

The Chamber's major concern is with the portion of the proposed regulatory revisions that concerns the aggregation of de minimis emission increases (emission increases that are less than the federal NSR triggering threshold) of particulate matter less than 5 microns in size (PM_{2.5}). The Chamber understands the importance of achieving fine particulate ambient air quality standards in Pennsylvania for the significant health improvements that can result, and realizes that the majority of the NSR regulatory revisions for PM_{2.5} are federal requirements that must be incorporated into Pennsylvania's rules. However, the Chamber has serious concerns about the competitive impact on Pennsylvania's business and industry of the regulatory provisions that could require the offsetting of de minimis emission increases of PM_{2.5}, particularly given the limited impact such offsetting would have on ambient air quality.

More specifically, these concerns arise because under the proposed regulations a de minimis PM_{2.5} emissions increase attributable to a facility modification would trigger emissions offset requirements if the sum of that de minimis amount plus all PM_{2.5} emissions increases and decreases aggregated over the ten years prior to submission of the relevant plan approval

application exceeded the 10 tons per year threshold defined as a “significant” PM_{2.5} emissions increase. The practical problems with this proposed de minimis emissions aggregation of PM_{2.5} emissions result from the shortage of PM_{2.5} Emission Reductions Credits (ERCs) eligible for use as offsets, given the restriction that offsetting PM_{2.5} ERCs must come from sources in the same (or in some cases, a contiguous) PM_{2.5} nonattainment region.

Because of this limited availability of ERCs eligible for use as offsets, the proposal to require PM_{2.5} ERCs for the aggregation of small increases of PM_{2.5} emissions has a significant likelihood to cause major obstacles for Pennsylvania businesses to introduce changes into their operations or products with de minimis air quality impacts. This aggregation of PM_{2.5} de minimis emission increases would be an extension of the existing Pennsylvania NSR permitting requirements for VOCs and NO_x as ozone precursors. However, VOC and NO_x ERCs have never had the geographic or other limitations on availability and use that would apply to PM_{2.5} ERCs.

Importantly, this aggregation requirement is not required by the federal Clean Air Act, its implementing regulations, or comparable programs in other states. Pennsylvania’s Air Pollution Control Act prohibits adoption of measures more stringent than those required under the federal Clean Air Act to achieve ambient air quality standards unless, among other things, Pennsylvania’s Environmental Quality Board determines those measures to be reasonably necessary in order to achieve or maintain such standards. Here, the preamble recites generally that the proposed regulations are reasonably necessary for that purpose; however, the proposed regulations and preamble do not provide any reasoned support for this conclusion with respect to extending de minimis emissions aggregation to PM_{2.5}.

The few additional reductions that may be achieved through this provision are far outweighed by the problems which acquiring PM_{2.5} offsets will cause for businesses in this context. Because the federal threshold for triggering PM_{2.5} NSR permitting requirements is only 10 tons per year, industry will easily be triggering this requirement both for major increases and for the aggregation of small increases. The triggering of the proposed de minimis aggregation of PM_{2.5} increases will be very disruptive to Pennsylvania business. For example a business’s very minor project with a 1 ton increase in PM_{2.5}, causing little or no impact on Pennsylvania’s air quality, may not be possible to permit due to not finding ERCs in time that are available. This could be the critical project that would otherwise allow that industry to stay competitive or to make that new product that is in demand.

The smaller geographic areas for PM_{2.5} nonattainment, the federal rules for use of PM_{2.5} ERCs and the generally unavailability of many PM_{2.5} ERCs, while not the making of PADEP, does make the aggregation of PM_{2.5} de minimis emission increases over a 10 year period a much more stringent requirement than the federal requirement. This concern applies even with the helpful flexibility provided by the prospect of interpollutant trading, given the relevant geographic restrictions on eligibility and the high ratios needed to apply NO_x or SO₂ ERCs to offset PM_{2.5} emissions. In addition, recent U.S. EPA positions on how NSR emission increases should be determined, significantly increase the likelihood of Pennsylvania industries determining a

calculated significant aggregate PM_{2.5} emission increase, even in connection with implementing small projects. Also accounting for all PM_{2.5} emission increases over such a long period as 10-years is especially difficult given the lack of emission factors and even a final test method by U.S. EPA yet. The Chamber respectfully requests that these regulations conform to federal requirements in this area and not require the offsetting of aggregated minor increases in PM_{2.5} emissions.

The revisions that are proposed for Section 127.203 do not appear to be clarifying and are actually confusing as to the intent of referencing applicability requirements of paragraphs (2) and (3). Additionally the proposed revisions for paragraphs (2) and (3) of Section 127.203(b)(2) and (3) are more restrictive than the existing language in the regulations. The present language already clearly references the facility's existing potential to emit (PTE), it does not reference what the proposed new PTE would be for the facility. The proposed language does not clarify, but makes the provisions more stringent than the present requirements. The existing regulatory language should be retained unchanged.

The Chamber also requests the addition of clarifying language relative to fugitive emissions. While Section 127.204 clearly states that for the proposed project that fugitive emissions are counted, the NNSR regulations have on occasion been interpreted differently from the federal rules for defining what is a major source (facility in Pennsylvania). It would be helpful to have regulatory language that stated the federal definition of a Major Source, which defines when to include fugitive emissions, is used to determine applicability for Pennsylvania's NNSR permitting regulations. In this way, the Pennsylvania program would not potentially include requirements that are more stringent than those that would otherwise apply under the federal Clean Air Act.

The other comment that the Chamber would like to make is over the last provision in PADEP's proposed regulatory provisions:

127.210. Offset ratios.

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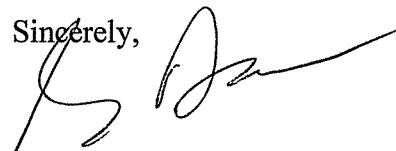
(b) In complying with the emissions offset requirements of this subchapter, the emissions offsets obtained shall be of the same NSR regulated pollutant unless interpollutant offsetting is authorized for a particular pollutant as specified in subsection (a).

The Chamber's concern is that this provision does not recognize the inter-pollutant trading that has already been approved by the U.S EPA for NO_x and VOC ERCs in the 5-county Philadelphia area. This language should be amended to either include this interpollutant trading, or so as to not exclude this approved ERC trading mechanism.

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Thank you for the opportunity to provide these comments. We welcome the opportunity to answer questions or discuss these points further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gene Barr', written over the word 'Sincerely,'.

Gene Barr
Vice President, Government & Public Affairs