

Gene,

Not sure why Chamber comments have not as yet been submitted. Here's a list of DuPont concerns with Draft Regulation.

regards, Paul

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Primary Comments and Concerns: Draft FEL Alternate NSR Regulation

1.) Draft Alternate NSR regulation does not resemble New Source Review and its intended purpose.

The draft regulation does not focus on the construction of significant new emission units nor major modifications to existing units. In reality it is a permitting scheme to avoid NSR by capping all criteria pollutants to a source's actual baseline emissions without any modification or new source construction. This approach is not consistent with federal major NSR intent and will restrict existing sources from using the growth potential currently allowed by their valid Title V operating permits.

The Draft NSR alternative regulation is similar to the federal PAL program but is only attractive to sources and facilities that routinely are modifying and improving their operations. This type of facility needs the modification flexibility offered by a PAL or FEL program. However, many sources do not modify or change very often and the FEL concept would be very restrictive to their operations without some amount of capital investment to create compliance headspace (eg. institutional and commercial boilers).

2.) Draft Alternate NSR regulation has a fatal flaw that will prevent EPA approval.

EPA federal NSR reform provides for an optional emission capping PAL permit that is based on actual emissions baseline, which allows a ten year lookback for a facility's representative baseline. The Draft Alternate NSR regulation provides for a combination of allowable and actual emissions from the various emission units at a facility in order to set the FEL cap. The use of allowable emissions is contrary to EPA federal regulations. Recent Court decisions have remanded portions of federal NSR Reform that were based on potential or allowable emissions, i.e. Clean Unit exemption and Pollution Control Project exclusion. It is extremely doubtful that EPA will approve the Draft FEL regulation as long as allowable emissions are part of the FEL calculus.

Unfortunately, without the allowable emissions for controlled units, the FEL cap would have no compliance headspace above actual emissions. FEL caps must have some amount of compliance headspace built in so that a source can operate comfortably without imminent danger of non-

compliance. Facilities need to have a small amount of "room to grow" under the FEL caps before being required to install controls to create headspace.

3.) Draft Alternate NSR regulation must be optional and not a mandatory program.

The Draft FEL regulation will place extreme production restrictions on many Delaware businesses whose emission units are not well controlled for each and every criteria pollutant. An emission unit may be well controlled for non-attainment pollutants such as NOx or VOC, but will be classified as not well controlled for other pollutants such as PM, CO, or other NSR regulated compounds. Thus normal increased demand for production will not be allowed without installation of additional controls under FEL permitting scheme but are currently allowed under DNREC Reg #1125 and Title V operating permits.

The FEL permitting approach must be an option for sources who choose to have the restrictive emission caps in exchange for greater NSR flexibility. The federal NSR PAL approach is optional and a few sources in DE have selected this option. If DNREC continues to require the FEL approach to be mandatory, it will force many businesses to leave the state because of this overly restrictive permitting scheme.

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