

December 7, 2007

Ms. Judy Katz, 3AP00
Director, Air Protection Division
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: New Source Review Equivalency Demonstration for the State of Delaware

Dear Ms. Katz:

The Delaware Department of Natural Resources and Environmental Control (DNREC) submits the attached demonstration that the Delaware New Source Review (NSR) program is equivalent to and at least as stringent as the federal NSR program incorporating the EPA Reforms promulgated December 31, 2002, as modified by the D. C. Circuit Court of Appeals on June 24, 2005.

Delaware's NSR rules are embodied in Regulation 1125 (formerly Regulation 25); the Emissions Offset Provision (EOP) and Prevention of Significant Deterioration (PSD). Delaware has not adopted the Reforms. After unsuccessfully considering modifying the Reforms and looking at a new applicability concept, Delaware has at this time decided not to modify Regulation 1125. The Clean Air Act and the December 31, 2002 Reforms rule both sanction states developing alternatives to federal rules as long as these rules are equivalent to and at least as stringent as the target federal rule. States using alternative rules are required to submit to the EPA an Equivalency Demonstration that compares the alternative to the target federal rule and clearly shows they are no less stringent than the federal rules. The attached document does show that Delaware's Regulation 1125 is at least as stringent as, if not more stringent than, the federal rules based on the EPA Reforms.

When the EPA Reforms were issued at the end of 2002, our analysis of the requirements of the rule indicated the Reforms did not accomplish EPA's stated objectives of reduced program complexity, lower administrative burden, reduced regulatory uncertainty and the resultant project delays without sacrificing the then current level of environmental protection and benefits derived from the program. Based on Delaware's analysis of the rule provisions the Reforms, in fact, introduced a new level of complexity and uncertainty which would undoubtedly result in project delays where there had been none before and most certainly would have allowed many source physical changes to escape NSR permitting thus allowing uncontrolled increases in emissions, just the opposite of stated intentions.

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Delaware expressed concern by launching suit in federal court contesting this relaxation of federal NSR rules. The suit was later combined with like actions by other states emerging as State of New York et al vs., the EPA. The allowance of uncontrolled emissions was particularly vexing as we had recently completed an extensive effort in devising new control strategies for volatile organic compounds (VOC) and nitrogen dioxides (NOx) as part of a program to become compliant with the 1-hour ground-level ozone National Ambient Air Quality Standard (NAAQS), and were embarking on a more difficult program to ensure compliance with the new 8-hour ground-level ozone NAAQS. As the ground-level ozone NAAQS becomes lower, the more easily realized emission reductions are claimed leaving numerous, smaller, more difficult to capture emission sources to form a reduction program. If NSR modifications under the Reform rules escape NSR permitting (and installation of emission abatement controls) Delaware's non-attainment compliance programs (ground-level ozone and now PM_{2.5}) efforts will be hampered.

Several years ago, Delaware formed a Review Committee, the first step in the Delaware Regulatory Development Process, which was charged to review the Reforms and try to assess how they might be enhanced to accommodate Delaware permitting needs. After several months it became apparent that committee members could not come to agreement on the form a Reforms modified Regulation 1125 would take. Therefore, a separate sub-committee was formed to look for another solution to NSR permitting. This group, composed of representatives from major sources, recommended the Facility-wide Emission Limit (FEL) concept, an applicability test somewhat analogous to the Plant-wide Applicability Limit (PAL). Although committee members showed initial interest in the concept, in developing the details of how it would be administered a degree of dissension was evidenced. Upon completion of Draft 4 of the FEL, sufficient adverse comments were received that DNREC has ceased that effort, and instead developed an Equivalency Demonstration in support of Delaware's current regulations which are similar to the federal pre-Reform rules.

Delaware wishes to thank the EPA and Region 3 for the help they have given in pursuing alternative NSR rules, particularly the FEL, and in developing this Equivalency Demonstration. Your patience in allowing the FEL effort to continue and your invaluable participation on the Review Committee were much appreciated.

If you have any questions concerning the attached material, please do not hesitate to contact me.

Sincerely,

Ali Mirzakhali, P.E.
Administrator