DSCC 08/08/06 COMMENTS & DNREC RESPONSE

1/18/07

Comment 1:

I. Introduction and Summary

a. The State Chamber appreciates the opportunity to provide comments on the proposed revision to DE Air Regulation 1125, which implements a facility-wide emission limit ("FEL") program (the "draft FEL regulation").

b. In summary, the draft FEL regulation would require existing manufacturing facilities and other businesses in the State to adopt FELs for criteria and certain other pollutants (including VOCs, PM, SOx, NOx, lead and mercury), based upon a combination of each facility's potential, actual and fugitive emissions. This raises a number of concerns for the affected regulated community. Of particular concern is that, under some circumstances, the facility-wide emissions limits could be set well below current permitted emission levels.

DNREC Response: The FEL section of Regulation 1125 does not require new or modified sources of non-criteria pollutants to adopt the FEL If they don't elect to be covered under a FEL they will be regulated under the provisions of the EPA Reforms, which will be adopted by reference. Also, all new sources applying for construction permits after the effective date of this regulation will be regulated under the provisions of the EPA Reforms as shown in section 3.2 of Draft 4 - 061906 of the revised Regulation 1125.

The methodology of setting the FEL for a facility was developed and expressed in a stakeholder developed white paper in early 2005, so the basic concept has been around a long time and survived repeated scrutiny in Review Committee meetings, four well-publicized public meetings near year-end 2005 and a Chamber of Commerce luncheon meeting. The way it works, as you know, is to determine the degree of abatement of each emissions unit comprising the source or facility in question in order to set an emissions limit on each emissions unit based on the degree of abatement by that emissions unit. Units that meet a definition of well-controlled will have an emissions limit set at the potential to emit (PTE) while emissions units not meeting the definition would be termed uncontrolled and have an emissions limit set based on a determination of recent actual emissions (as currently envisioned, a source could look back up to 10 years to find a consecutive 24-month period that was more representative of normal operation as a baseline for recent actual emissions). All of these emissions limits are summed to find the facility-wide emissions limit or FEL for the source.

A source that has few, if any, controls would find their FEL set below PTE. What problems this may present the facility owner depends upon the operating philosophy, process controllability, expansion plans and a number of other factors usually only known by source personnel.

In setting the FEL DNREC agrees that the FEL should not be set at a level that puts sources immediately in noncompliance, or at a level that does not allow them to operate as they had been before the FEL was set. We have attempted to address this by defining a look-back period to provide the opportunity to capture a "representative period of normal operation" in establishing what constitutes "actual emissions." The inclusion of a well-controlled emission unit also was done to provide a level of reasonableness in this area. One also expects that capacity that has

not been used for 10 years is likely never to be used or that it will be found that operating changes to actually utilize the capacity requires the addition of equipment that in a non-FEL situation requires NSR permitting. Therefore, utilization of the capacity equivalent to the emissions allowed in the Title V permit may require NSR permitting with or without the FEL rule.

DNREC recommends each concerned facility use the provisions of the FEL proposal contained in Draft 4 of Regulation 1125 to calculate their own FEL (DNREC personnel will provide assistance, if desired) and see for themselves what difficulties may or may not exist in operating or expanding their facilities under a FEL.

Comment 2:

c. The State Chamber does not believe that a mandatory FEL program is appropriate for Delaware and does not believe that Delaware industries will support such a rule. The draft FEL regulation is flawed in a number of ways, including (i) creating a production cap on Delaware businesses, (ii) requiring inconsistent regulation of the same source, and (iii) being difficult or impossible to determine the overall impact of the regulation or how DNREC will implement it. While several of the comments below provide suggestions on how the draft FEL regulation could be clarified or provisions that should be added, the State Chamber recommends that should DNREC decide to continue pursuing the regulation, it be on an alternative, voluntary basis by which market forces drive whether Delaware businesses join the program to get greater permitting flexibility.

DNREC Response: We know the draft regulation (Draft 4 - 061906) presented to the Review Committee for comment is likely flawed in some aspects - that is why it is a draft. DNREC expected comments aimed at revising some provisions to be more acceptable to the various interests represented on the Committee. We did not expect repudiation by the Chamber of Commerce of basic concepts developed by the FEL sub-committee a year ago. The Review Committee considered many aspects of how the FEL should work - covering many of the issues in your comments - to be an acceptable rule during the 12 months from mid - 2005 to mid -2006. We thought we had dispensed with the difficult issues.

The FEL creates an emissions limit, not a production cap. Sources are free to make changes and adjustments within their FEL that creates more "headspace" or "operating room" to facilitate ease of operation, increasing capacity, modifying processes, etc without exceeding their FEL. If increased capacity is needed and if the emissions level would then exceed the FEL, controls may be added anywhere in the process that makes sense in achieving sources goal. The draft regulation also has provisions for increasing a FEL level.

We have difficulty responding to your comment "...(ii) requiring inconsistent regulation of the same source, and (iii) being difficult or impossible to determine the overall impact of the regulation or how DNREC will implement it." Since the FEL was first discussed over a year ago as a solution to the Review Committee impasse, Committee efforts have been directed toward making it more acceptable to the various interested parties (industry, the DSCC, EPA, DNREC, environmentalists, etc). These efforts are being continued, and the FEL concept is becoming defined in regulatory language. We agree the current language does not completely capture the FEL concept, and need to continue to work with the committee to refine it. If the Chamber of Commerce has suggestions to improve the clarity and intent of the FEL, we urge your

representatives on the Review Committee to make them known so we can work together to ease your concerns and make this a much better regulation.

The FEL program must be mandatory, as it is a wholesale replacement of major NSR as it applies to modified sources. If it were developed as a voluntary program, with other applicability mechanisms remaining, it would be required to be comparable to the federal PAL, and not evaluated as a program distinct from traditional NSR. However, as an applicability option, since it would be compared to the federal PAL, DNREC believes it would not be a feasible approach. As a distinct program DNREC believes the FEL can be designed to ensure environmental protection equivalent to the current NSR program. A mandatory FEL will insure regulators also receive the benefits of a simple and certain applicability mechanism, and other benefits of the FEL program are improved certainty for industry as to what is and is not regulated under NSR which means industry will purse more projects with collateral positive environmental impacts favorable to Delaware air quality. Also, a voluntary approach may allow sources to switch between the FEL and some specified non-FEL system depending upon which approach provides the greatest benefit to the source at that time, thus providing an opportunity for "gaming" the system.

While we share the belief of many stakeholders that the NSR permitting process is complex and has some inadequacies, we do not believe the process offered by the EPA (the Reforms) achieves the stated ends – in fact, we believe the Reforms may tend to increase emissions through the many "loopholes" established in trying (but not succeeding) to reduce the overall complexity of NSR permitting. At this time DNREC believes the only feasible alternative to the mandatory FEL approach is, in general, the continuance of current Regulation 1125, requirements, and not the EPA reforms. We would not sanction using the EPA Reforms for those electing not to adopt the FEL.

Comment 3:

d. The deadline for DNREC to submit SIP revisions to EPA regarding these reforms was January 1, 2006. Regardless of whether one agrees with the FEL approach, EPA will need to make an equivalency determination for the Delaware regulation that will likely take a significant amount of time. During this time, Delaware will be implementing outdated new source review rules. While DNREC continues to study the FEL program, DNREC should adopt by reference the core applicability tests promulgated by EPA in 2002 for new source review with the exception of the Clean Unit and Pollution Control Project provisions.

DNREC Response: Adopting a set of interim rules for a relatively short period of time is a lengthy resource intensive activity which is bound to tie up much needed resources and confuse industry and the general public. Also, since the EPA has yet to show concern for our belated submission (we are not the only state to be late), adopting interim rules doesn't seem necessary.

We should point out that since DNREC does not believe the EPA Reforms are an appropriate way to achieve the NSR permitting improvements or to administer the NSR program, we would not sanction adopting the Reforms as a fall-back position in the event the FEL was abandoned for whatever reasons. Our route would be to substantially use the current form of Regulation 1125. At least six states have done so (with their current rules which are essentially the same as Delaware's Regulation 1125) and submitted an equivalency demonstration. EPA has yet to rule on these demonstrations.

Comment 4:

II. Intent of Revising Delaware NSR Regulation:

The draft FEL regulation is a marked departure from traditional New Source Review. At the inception of this regulatory initiative, DNREC stated that its intent was to consider revisions to Reg. 1125 in order to address EPA NSR reforms. The EPA NSR reforms included a revised method to determine baseline emissions, a Clean Unit exclusion, and a new provision for a Plant Applicability Limit ("PAL") program. While DNREC expressed disdain for many of the EPA revisions, there was no suggestion that DNREC would abandon its NSR program and replace it with a FEL program. From the outset, DNREC also confirmed that NSR is not intended to force new technology requirements or emission limits on an existing facility.

Unfortunately, as the FEL regulation has developed, it bears no resemblance to NSR, and it does in fact act to force new emission limits and technology requirements on existing facilities. For these reasons alone, the State Chamber cannot support the FEL regulation in the form that has been proposed. More specifically, the proposed regulation does not focus on the NSR concepts of construction of significant new emission units or major modifications to existing units, but instead creates a permitting scheme to avoid NSR applicability. Furthermore, the proposed regulation will create a production cap for many facilities. This approach is not consistent with the intent of EPA's NSR reforms and will seriously restrict existing sources from using the growth potential currently allowed by their valid SIP based permits and Title V operating permits. While industry generally supports the concept of FELs, it is only when the program is voluntary and properly structured to avoid inappropriate reductions to facility emission operating margins.

DNREC Response: DNREC agrees that the Draft FEL regulation does not resemble the current federal New Source Review regulations nor Regulation 1125, relative to major modifications. This is by design as discussed below. However, we do believe that the FEL concept is consistent with the intended purpose of NSR (i.e., to aid in the attainment of, and to prevent the significant deterioration of air quality relative to any NAAQS).

The traditional NSR permitting process, as explained by the EPA and some members of this Review Committee, is perceived as very complex, and to act as a disincentive to industry in making modifications that may offer other positive impacts (cost reduction, energy efficiency, reduction of other emissions, etc. A purpose of the FEL is to avoid this perceived complexity of the NSR applicability determination and permitting process, provide for industry flexibility, and at the same time retain the current level of environmental protection.

Comment 5:

III. Comments

a. Production cap on affected sources: In many cases, the FEL will be set based on historical actual emissions - which are much lower than permitted allowable emissions. As such, the proposed FEL regulation will establish a production cap on many facilities in Delaware. A facility could violate its FEL by increasing production in response to economic demand for its product(s) without making any changes or modifications. This effectively places a cap on the production of Delaware businesses, which could not be increased without significant delays and/or expenditure.

DNREC Response: DNREC does not agree. This comment is covered in some detail in the response to comment 1 and 2 above.

Comment 6:

b. Equivalency determination problematic: The draft FEL regulation is proposed as the New Source Review program in the State and DNREC will be required to get EPA approval of the FEL program. For EPA to approve a program that differs from the promulgated federal regulations, especially a program that is so dramatically different from the federal program (e.g., a mandatory FEL program replacing rather than augmenting the new source review program), the State will need to make a showing that its program is environmentally equivalent to the federal program. This showing will involve complicated and difficult issues regarding the FEL program's use of actual and potential historic and future emissions. EPA has not considered these issues before and has stated an intent to consider them in future rulemaking. As such, the equivalency determination will be lengthy and complex and may include a full EPA rulemaking review. The showing is more likely to be successful if the FEL program is designed as a voluntary option to the core new source review program, rather than a wholesale replacement of the program.

DNREC Response: DNREC agrees that it will need to make an equivalency demonstration as part of the rulemaking record. DNRECs thoughts on making the FEL a voluntary program are covered above.

Comment 7:

c. Increased and inconsistent regulation of affected sources:

i. Within the draft FEL regulation, there are a number of conservative assumptions and adjustments incorporated into emissions tracking that will require facilities to monitor emissions in a manner inconsistent with the setting of the FEL levels, likely eliminating any FEL margins or compliance headspace. It is a basic tenet of administrative law that the basis for setting an emission standard and determining compliance with that standard need to be consistent. Therefore, the FEL regulation must allow that the setting of the FEL levels and the tracking of compliance with them be done on exactly the same basis.

DNREC Response: We suggest the Chamber of Commerce give us the appropriate regulatory language with reference to section numbers, etc to aid our understanding of what their concerns are. We agree that the current draft still has problem areas.

Comment 8:

1. For instance, if the emissions tracking system has penalties built in or the emissions factors can be adjusted without a consistent adjustment of the FEL itself, sources would be penalized and have their compliance margins eliminated simply through conservative and inconsistent emissions tracking policy rather than a true increase in emissions. Also, under the draft FEL regulation, emission penalties are built into FEL tracking, so that each plant will have two sets of emissions books, one for the FELs and one for reporting actual emissions under Title V, TRI, and other compliance requirements. To avoid this, emissions past and current need to be determined based on the best estimate and the methods used in setting the FEL need to be reflected in the compliance tracking. Further the methods of tracking should be spelled out in the permit, whenever possible. Otherwise, how will DNREC assure that sources are not subject to enforcement action in a situation where the FEL is set using one method and compliance is determined using another method?

DNREC Response: We suggest comments include definitive wording to correct identified concerns. Generally, we accept the premise that FEL numbers and Title V numbers, emission determination methods, monitoring methods, etc. be consistent. It is not our intent to complicate the process. We want a simple regulation that will satisfy the needs of industry, regulators and the general public.

Comment 9:

ii. DNREC is currently developing a multi-pollutant regulation that will affect facilities included within the scope of the FEL program. How will DNREC coordinate these two regulatory efforts? An emission unit that complies with the multi-pollutant regulation should be included in those units deemed "well-controlled."

DNREC Response: The multi-P reg has been promulgated and is in force although it has been challenged and will be heard before the Environmental Review Board..

Requirements to add controls to a utility under the Multi-P reg will be reflected in the calculation of the utility FEL. An emission unit with BACT/LAER controls recently added will be considered well-controlled. We agree that units complying with the multi-p regulation will be well-controlled under the FEL.

Comment 10:

iii. Many of the provisions suggested for the FEL program are duplicative in nature of other Delaware air control programs. These provisions will increase the regulatory burden on Delaware facilities without providing new information to DNREC and are unnecessary.

DNREC Response: Please be specific as to which provisions so we can have a dialog on how to correct the problem you perceive.

Comment 11:

d. Implementation of Draft FEL Regulation May Be Uncertain and Uneven:

i. A number of the definitions in the draft FEL regulation are so general as to make it difficult or impossible to determine the overall impact of the regulation. These include:

1. "Actual emissions" -

a. Unclear about time periods and how they will be required by DNREC. In the last sentence of Section (2) of the definition, is it DNREC's intent to require the same time period be used for each pollutant or all pollutants?

DNREC Response: This is an error in Draft 4. We stated in an earlier Committee meeting that each pollutant may use a different time period. That is what section (2) of the "Actual Emissions" definition should say.

Comment 12:

b. The definition states that DNREC shall allow the use of a period up to 10-years before the particular date upon a determination that the period is more representative of "normal source operation." "Normal source operation" is not defined and facilities should not be burdened to demonstrate that operations in the representative time frame are "normal."

DNREC Response: If we stick with this we will likely define normal operation. However, we are considering changing the provision to state that "Actual Emissions" be based on an unconditional 10-year lookback. We look forward to committee discussion in this area.

Comment 13:

2. "Well-controlled emission unit" -

a. Given the vagueness of BACT/LAER requirements for many sources, and the reality that BACT/LAER controls are often the subject of negotiation between a facility and the applicable agencies, a facility cannot predict with certainty if its units will meet the definition. More objective criteria are needed.

DNREC Response: Sources have been doing BACT/LAER determinations under the circa 1999 NSR rules. The EPA BACT/LAER Clearing House provides a wealth of data to support a sources determination. We disagree with the concern but will entertain any suggestions from the DSCC or the Review Committee with specific comments on how the language could be revised.

Comment 14:

b. For Part 2 of the definition, it is unclear whether the 85% requirement is more stringent or less stringent than BACT/LAER.

DNREC Response: You are so right. This provision seemed clear to use when we wrote it and it seemed clear when it was discussed in the Review Committee. However, on rereading it could mean we intend it to be more stringent which is not the case. We will correct the draft regulatory language.

Comment 15:

c. For Part 5 of the definition, clearer criteria are needed for how a unit will be determined to be "well-controlled" other than DNREC's opinion. In this regard, an index should be included that lists what will be considered well-controlled under this Part. In addition, it unclear whether this provision, or any other, includes units that are overcontrolled by a source and have not undergone a BACT/LAER determination.

DNREC Response: We will be happy to entertain any suggestions as to additional criteria for part (5), although we believe this represents a small portion of the "well-controlled' universe and may not justify the effort.

We believe the "well-controlled" definition includes sufficient explanation to cover sources with sufficient controls to qualify as BACT/LAER with no determination. The Committee should discuss in more detail, and perhaps this provision should be dropped.

Comment 16:

ii. A number of the specific provisions in the draft FEL regulation also contain language that make it difficult or impossible to determine the effect of the regulation. These include:

1. The intent of Section 1.5 is unclear.

DNREC Response:

This provision was copied from the existing Regulation 25. We thought it was clear, but, on rereading, perhaps some adjustment in language is needed. The purpose is to clearly specify

how to handle someone taking restrictions to avoid NSR permitting (e.g. a new source restricting hours of operation to avoid permitting) and then wishing to relax those provisions and operate as a major source.

Comment 17:

2. Section 4.2.2.1.4 establishes that a 24-month operating period will be used in determining the actual emissions, but is unclear as to whether the same period must be used for all pollutants or for all units for one pollutant. This should be clarified to establish that each pollutant can have a separate 24-month period.

DNREC Response:

We agree this needs to be clarified.

Comment 18:

3. Section 4.3.9.2 establishes a violation of some type but based upon the language it is unclear what circumstance would cause the violation and what criteria DNREC will apply. In addition, if the monitoring provisions are included in the permit, how could this violation arise?

DNREC Response:

We agree the language needs to be improved.

Comment 19:

4. Section 4.4.1.4 addresses an adjustment to the FEL based upon the FEL exceeding the allowable emissions but the purpose, method and mechanics are unclear.

DNREC Response:

We don't really understand the comment. It should be a simple reduction of the FEL level to a level that is equal to the allowable level. A FEL level that exceeds the allowable emissions of a facility makes no sense.

Comment 20:

5. Section 4.4.1.5 addresses an upward adjustment to the FEL but the requirements, standards and mechanism for this adjustment are not clear. For example, why does "less than" appear in the first sentence. In addition, the economically feasible criteria that DNREC will apply should be stated.

DNREC Response:

This is an area where we need the committee to help revise the provision to make it clear and workable.

Comment 21:

6. Section 4.4.1.6 addresses increasing a FEL when a new emission unit is added to the facility and complies with NSR. Why is the FEL being increased "less than" the allowable emissions included in the section and when would this apply?

DNREC Response:

"Equal to" is all that is needed. We agree that "or less than" should be deleted.

Comment 22:

7. Section 4.4.1.7 addresses adjustments of the FELs each time the Title V permit is renewed. Why is this needed and what is the intent? Need clear criteria, methods and procedures for any adjustments.

DNREC Response:

Presumably, changes may occur during operation between Title V renewals that could impact the FEL (e.g.,shutdown of an emissions unit). At renewal time, the impact of these events should be considered. We need the Committee will assist in language development.

Comment 23:

8. Section 4.4.1.8 appears to give the agency unilateral authority to adjust the FEL. Need clear criteria, methods and procedures for doing so.

DNREC Response:

We will discuss dropping this provision with the Committee

Comment 24:

9. Section 4.5 presents monitoring requirements but does not provide clear guidance as to when the general monitoring approaches (i.e., emissions factors and mass balances) will be allowed. Given that monitoring is already embedded in the Title V permit, the intent or reason for many of the provisions of this section is unclear If the section is needed, it needs clarity on when each method will be required or allowed.

DNREC Response:

We agree, and will discuss how to clarify this with the committee.

Comment 25:

10. Section 4.5.3.1 addresses validation of pollutant content of materials but provides no criteria for what will satisfy the requirement.

DNREC Response:

We agree, and will discuss how to clarify this with the committee.

Comment 26:

11. Section 4.5.7 calls for "revalidation" at least every five years. Need more clarity on what will be required, DNREC would consider to be the elements of that review, and whether sources would be at risk of further confiscation of their emission compliance margin.

DNREC Response:

We agree. NRG comment 11 and Valero comment 3 from their 07/28/06 submission also commented on this area.

Comment 27:

12. Section 4.7 sets forth the FEL reporting and notification requirements for the proposed regulation. This section states that semi-annual monitoring reports and deviation reports shall be submitted to DNREC in accordance with DE Air Regulation 30, but then provides requirements for what appears to be a separate semi-annual report in Section 4.7.1. It would be beneficial to coordinate reporting time frames with Title V reporting.

DNREC Response:

It is our intent to use the same time frames and we will make that clear in the next draft.

Comment 28:

e. Revisions/additions needed to draft FEL language

i. FEL programs are not appropriate for every source. Any program considered by DNREC should be an optional provision of Delaware's NSR regulation and not a mandatory requirement. This would allow the FEL permitting approach to be an option for sources who choose to have the restrictive emission caps in exchange for greater NSR flexibility, while not imposing the production cap on all affected sources. The federal NSR PAL approach is optional and a few sources in DE have selected this option. If DNREC requires a FEL approach to be mandatory, it will discourage new or expanded business operations in the State because of this overly restrictive permitting scheme.

DNREC Response:

Making this a voluntary option for the regulated community does not appear to make sense. This is discussed under Comment 2 above.

New sources coming to Delaware will not see the same situation as an existing Delaware source. The new to Delaware (as well as any home-grown new site) will build their new facility under the EPA Reforms as shown in Section 3.2 and then apply for a FEL. Since the new source will have all requisite controls (BACT or LAER) their FEL will be based on well-controlled emission units so the concern of an overly restrictive permitting "scheme" and "confiscation" of capacity do not apply. As a matter of fact all they will see is a dandy way of handling NSR permitting as they go forward with improvement and expansion projects.

Comment 29:

ii. Any FEL program must ensure that it does not limit the use of existing production capacity of any affected source; cause any undue hardship or expense to any affected source who wishes to use existing unused productive capacity; or create inequity within any class of affected sources subject to specific industrial standards that are based on emissions related to production.

DNREC Response:

This concern has been expressed several times in this document in many forms.

Comment 30:

iii. The draft FEL regulation lacks any provision for production growth, nor does it allow the de minimis increase afforded under the current NSR program. Similar to the current Regulation 1125, the draft FEL regulation needs to allow increases to the FEL that are less than NSR significant emission increases and provide that these increases will be added into the FEL. The addition of this allowance will provide for small growth and compliance headspace. This is particularly important for facilities that have few or no well-controlled emission units and would be forced to operate right at the edge of compliance since their FEL would be extremely close to, if not the same as, their actual emissions.

DNREC Response:

Under the FEL the installation of controls to reduce emissions will provide more "headroom" to those sources who believe more headroom is needed in the normal course of operation or to provide for anticipated or realized sales growth. Such installation of controls will benefit the state of Delaware in reducing unregulated emissions growth such that NAAQS compliance efforts are not adversely impacted or attainment status is not threatened.

Comment 31:

iv. Need to add non-severability clause. For Delaware businesses to consider the regulation, it is essential that the full regulatory impact of the regulation be understood. In order to do so, there must be an assurance that no provisions of the regulation may be severed in the future and the regulation still be applicable.

DNREC Response:

We do not agree. DNREC cannot waive its authority to make future changes to regulations. However, no provision of the regulation can be changed administratively. Any change to the regulation would be subject to the public notification and comment provisions of 7 Del. C., Chapter 60.

Comment 32:

v. Section 4.2 sets forth a procedure to establish the FEL in which DNREC unilaterally either accepts or modifies the facility-recommended FEL.

Under Section 4.2.2.2, if DNREC modifies the recommended FEL, the only revision allowed by the facility is to change the transitional period. This procedure must be revised to allow the facility an opportunity to review and discuss with DNREC the proposed modification and also to establish an appeal process for DNREC's final decision.

DNREC Response:

In general we agree. We believe this needs to be discussed more in the Committee.

Comment 33:

vi. There are many additional comments on provisions contained in the current draft FEL regulation. Although some of them are noted below, DSSC suggests that it does not make sense to address these in detail pending review of the threshold issues identified above (such as ensuring that the FEL program is a voluntary option to the core federal program).

1. Section 4.3.8 should say that when the monitor is out, a best estimate of actual emissions should be used.

2. Section 4.3.9.1 should have a "reasonable estimate" default and not the "highest potential" default.

3. Section 4.5.3.3 should call for the use of the best estimate rather than the highest value. Importantly, whatever approach that is used in setting the FELs should be used in tracking compliance.

4. Section 4.5.6.1 should not include an adjustment for uncertainty unless the same adjustment is made in setting the FEL so that we have consistency.

5. A "hybrid" FEL setting procedure may be more appropriate. The FEL is set at allowables for each unit that is well controlled and all other units are added in at actual levels. Another option should be provided wherein the source can propose to control a unit to the well controlled level before the FEL goes into effect and it is then counted in setting the FEL at the well controlled allowables level.

6. Because controls may need to be added before the FELs go into effect and this can involve many units, sources need four years from the date the FELs are set rather than four years from the date the rule is final. If work stays on course, there will be less than 3 years to design, install and debug controls. That is too little time. If there is any delay in setting the FELs, the schedule for adding controls will be impossible. In addition the NSR review of controls will need to be integrated into the setting of the FELs.

7. There is too little time provided under Section 4.2.2.2 (for evaluating a different FEL level and the transition plan) and Section 4.7.3 (for the delivery of test results).

8. The regulation must not contain cross references to other federal and/or state regulations, but instead must include all requirements.

DNREC Response:

These are all good comments and should be discussed in the Review Committee or a separate sub-committee set up to provide FEL language for the full committee to consider. In most cases,

DNREC has no firm position on most of these issues and only wants to insure we have a workable, well thought out regulation that the regulated community generally agrees with.