

Marvin N. Schoenhals, Chairman  
James A. Wolfe, President & CEO

July 26, 2004

Mr. John Blevins  
Director  
DNREC, Division of Air and Waste Management  
89 Kings Highway  
Dover, DE 19901

RE: Recent Air Quality Regulatory Initiatives

Dear Mr. Blevins,

The Delaware State Chamber of Commerce (DSCC) Air Subcommittee thanks you for the opportunity to review and continue to dialog concerning proposed Delaware air pollution control regulations and initiatives. This letter conveys the comments to date of the DSCC Air Subcommittee on the following items:

- Minor New Source Review (Proposed Rule)
- Distributed Power Generation (Draft Rule)
- SB 321 Bio-diesel Fuels (Draft Legislation)
- Regional Greenhouse Gas Initiative (RGGI)

We have made every effort to develop consensus on these items and believe they reflect the concerns of the majority of active committee members.

General comments include: 1) The need for better consistency with other Delaware and federal proposed and final regulations, where possible, in order to eliminate regulatory uncertainty and conflicting requirements which may result from rule overlap and/or require multiple sets of recordkeeping and reporting efforts. 2) We would also like to have the opportunity to review and evaluate scientific data, and economic vs. health benefit studies when used to justify new regulations and establish threshold standards. 3) The committee expressed concern regarding adoption of language from other state regulations, without adequate assessment of their appropriateness to Delaware's manufacturing industry, other businesses, and the state's economic health. Delaware is a small state and the impacts of adopting such generic rulemaking can have a much greater impact on Delaware's stakeholders than those of our larger neighbors who can absorb such changes with minimal impact. We feel the dialogue between legislators, stakeholders, and information gathering committees is an integral part of a fair and effective legislating and rule making process.

We are pleased to present the following comments specific to the identified initiatives.

#### **I. Minor New Source Review (MNSR)**

To regulate uncontrolled criteria pollutant emissions from stationary sources that do not meet major source thresholds. We understand the purpose of this regulation is to allow Delaware to achieve NAAQS attainment status for the 8-hr. ozone and PM standards. As a threshold matter, we would ask that DNREC confirm, based upon available analytical data, that the pollution-reduction benefits of such a rule justify its likely significant costs and that MNSR is a cost-effective means towards the attainment goal. Other options, including speed limit decreases and

control of unregulated or otherwise under-regulated VOC and NO<sub>x</sub> sources must also be considered.<sup>1</sup>

While we believe that the relative merits of an MNSR rule are still open to debate, the DSCC Air Subcommittee would ask that at a minimum, any rule reflect the following principles. More specific comments will be provided through the ongoing rulemaking process:

- For clarity, any MNSR rule should be promulgated in the form of an amendment to Regulation No. 2.
- As part of any MNSR rule, DNREC should commit to, and the legislature should provide the necessary resources to ensure, expeditious review of, and technical support for, Reg. 2/MNSR permitting. Even absent the potential complexities of MNSR, Reg. 2 construction permitting is often substantially delayed and places substantial strain on the business planning and budgeting process. General permits, up-front timing commitments and greater process transparency are essential to any MNSR rule. All efforts should be made to establish sensible, consistent and, where practicable, generic recordkeeping, reporting and monitoring permit provisions.
- The rule should establish a de minimis, pollutant-specific PTE threshold below which MNSR would not be triggered. The rule should include a formal list of sources that are exempt from MNSR, or reference the exemption list in Regulation 2.
- Unlike major NSR, MNSR should not require aggregation of contemporaneous de minimis increases.
- Existing sources should be grandfathered. Only new or modified sources above a de minimis threshold would trigger MNSR.
- All of the improvements to NSR requirements included in federal NSR Reform should be afforded to MNSR sources, too, including baseline provisions and PALs and other items that affect applicability and requirements.
- Existing sources should be grandfathered; emissions from existing sources are adequately covered by Reasonably Available Control Technology (RACT) and other existing regulatory programs. Only new or modified sources above a de minimis threshold should trigger MNSR.
- Synthetic minor permits should continue to protect sources from major NSR and major HAP source since definition of synthetic minor means "not major". Existing synthetic minor sources should not trigger MNSR unless they increase emissions thru a modification.
- Rule should be limited to pollutants that exceed Non-attainment thresholds, currently ground-level O<sub>3</sub>, (affecting NO<sub>x</sub> and VOC emissions), and soon PM<sub>2.5</sub>. Consider, further narrowing VOC applicability to a list of highly reactive VOCs, as per the Houston, Texas model.

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<sup>1</sup> Small VOC and NO<sub>x</sub> sources that could be generically controlled (e.g. by regulation) such as; gasoline lawnmowers, spray containers & cosmetics (e.g. nail polish, etc), railroad engines (e.g. Conrail), traffic controls (lower more gas efficient speed limits, engine idling at truck stops, toll booth back-ups), and pleasure boat exhaust would all help achieve Ozone Attainment in Delaware. More information on this topic may be obtained via the notes of the 1995 DNREC/Industry Commit for Ozone Attainment. NOTE: MINOR NSR CURRENTLY APPLIES ONLY TO STATIONARY SOURCES

- Emissions offsets should not be required under MNSR. The burden on small sources could be quite significant to find or purchase additional reductions. The number of minor NSR projects and the size of the offsets would be quite small as well, since MNSR will most likely only bracket emissions increases in the 5-20 TYP range.
- Control technology for MNSR should be defined differently than major NSR, e.g. as Best Available Technology or BAT. BAT could be generically defined as a specific type of control technology or operating practice for type of source or some percentage of reduction of uncontrolled emissions. That way, it would be easier for small sources to search for appropriate technologies without paying outside consultants to do expensive cost-benefit analyses to balance engineering, environmental, and economic considerations.
- Cost of BAT must be a consideration. If the cost for a feasible BAT option is steep, sources must have the option to conduct a cost benefit analysis to determine BAT. Even a full BACT under major source PSD allows for consideration of cost and other factors in determining appropriate levels of pollution control.
- DNREC should offer free research for best available technology (BAT) to small businesses in the to 5-20 ton source category. The program would be similar to the one currently offered by DNREC to small sources for screen modeling for Regulation 2 registration.
- Clarify and minimize duplication / overlap with Distributed Generator Rule, and specifically exempt emergency generators otherwise subject to DG rule.

## **II. Distributed Generation (DG) Regulation 44**

Regulation 44 is under development to define and permit emergency and non-emergency electrical on-site generators in order to control NO<sub>x</sub>, nonmethane hydrocarbons, particulates, CO and CO<sub>2</sub>. The DSCC Air Subcommittee has the following comments on Regulation 44:

- Clarify definition of “emergency”, and incorporate integrated electric system approach.
- Clarify definition of testing and maintenance.
- 50 hours per year of annual testing and maintenance is not sufficient to ensure proper operation in an emergency. RICE MACT (40 CFR Part 63, Subpart ZZZZ) allows up to 100 hours / yr. as a threshold for limited use and would be a more reasonable maintenance allowance.
- Rule should include a Hp size threshold for applicability. The MACT Subpart ZZZZ rule sets applicability at >500 Hp. DNREC Reg 2 exempts any fuel burning equipment <10mmbtu/hr (about 3900 Hp). Regulation 12 Section 4.1(d) (NO<sub>x</sub> RACT) exempts any ICE <450Hp and exempts ICE of any size from NO<sub>x</sub> RACT if it operates less than 5% capacity factor (<438 hrs/yr). Lastly, there is a DNREC Policy Statement clarifying that a diesel electric generator < 10 mmbtu/hr does not require a permit under Reg 2 if its annual operation is <150 hr/yr (circa 1992). We recommend a minimum applicability parameter should be set around 500 Hp.
- Please provide additional information prior to setting sulfur emissions limits. Fuel suppliers do not guarantee sulfur content at all times. Consider on-road fuel standards. Lab testing was suggested to verify compliance, but this should be investigated from a cost- benefit point of view. Vendor supplied fuel analysis may be another approach.

- Exempt residential units from the regulation.
- Adopt EPA Potential to Emit of 500 hrs for emergency generators. 8760 hours is not realistic, and far from actual use.
- We oppose the inclusion of CO<sub>2</sub> in this regulation. We believe that DNREC does not have the authority to regulate CO<sub>2</sub>. Federal Register notice from Sept. 8, 2003 discusses this issue relative to EPA authority and an NGO petition asking EPA to regulate CO<sub>2</sub> from motor vehicles. See page 52925, third column, which sums up EPA position and uses a legal review by EPA General Counsel Robert Fabricant (8/29/03).

"In a memorandum to the Acting Administrator (of EPA) dated August 29, 2003, the Counsel concluded that the CAA does not authorize EPA to regulate for global climate change purposes, and accordingly that CO<sub>2</sub> and other GHGs cannot be considered "air pollutants" subject to the CAA's regulatory provisions for any contribution they may make to global climate change."

### **III. Senate Bill 321 (formerly 308) Bio-diesel Fuel**

This Bill would require all diesel fuel sold in Delaware to be at least 2% bio-diesel (B2) and eliminate the sale of standard diesel. The DSCC Air Subcommittee has the following questions/concerns on this proposed legislation:

- Supply issues:
  - If enacted, SB 321 would result in regular diesel fuel not being inventoried by DE fuel suppliers.
  - In an extended electrical outage (>3 days), emergency generators would need to be re-supplied. Can DE suppliers provide a continuous flow of fuel to all emergency generators?
  - In a multi-state outage (Northeast blackout) could DE emergency generators depend on out-of-state supplies should DE supplies (of B2, since regular diesel is illegal to sell) be short?
  - Provide clarification that the sale and purchase of non-biodiesel fuel for the purpose of producing at least a 2% bio-diesel blended product for sale in DE is not prohibited.
- Equipment reliability concerns:
  - Some engine manufacturers will void warranties if anything but regular diesel fuel is used.
  - Other engine manufacturers will allow up to 5% bio-diesel, but then will not warrant.
  - Vegetable oils (soy oil) and diesel oil separate over time and at low temperatures. Additional mixing components/additives to tanks are needed to maintain fuel reliability. Would also mean that all diesel fuel storage tanks would have to be replaced with heated or agitated tanks.
  - Some manufacturers note excessive wear of rubber parts with use of bio-diesel fuel.
- Cost benefit analysis for implementing SB 321
  - What data used on emissions reductions?
  - What data used to suggest \$.02 per gallon increase from regular diesel to B2?

#### **IV. The Regional Greenhouse Gas Initiative (RGGI or ReGGie)**

This program initiative targets the electric generation sector in eleven North-Eastern states and the Canadian provinces. RGGI currently does not include other emissions sectors. Currently 9 of the 11 states including Delaware are participants (2 States and the provinces are observers) in this initiative, with an objective to reduce regional climate changing emissions, primarily CO<sub>2</sub> released into the region's atmosphere. Although CO<sub>2</sub> is not a regulated or criteria pollutant; the initiative is based its presumed link to global warming. By virtue of each state's voluntary commitment to RGGI, each "participating" state will be bound by the requirements of the regional initiative, regardless of state specific impact. RGGI is well underway and the initiative is seeking consensus and support to establish regional regulatory guidelines as soon as April 2005. The RGGI process has been designed to incorporate stakeholder input on a regional and state specific basis. Regional participation is achieved by virtue of a formal regional stakeholder process: however limited by invitation and without Delaware energy provider representation. State specific stakeholder forums are less formal and designed to allow additional stakeholder input. Delaware plans to establish a state based stakeholder forum.

The Chamber and its membership are concerned because of the impacts this initiative will have on Delaware; its economy and its power generation sources. Following are concerns and recommendations regarding this initiative and Delaware's participation:

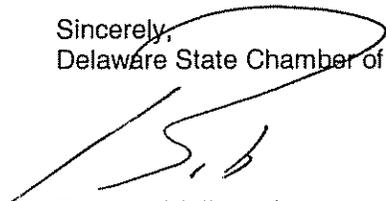
- Delaware's energy region is PJM, not the northeast, and its energy and environmental policy must be based on regional energy market impacts, not regional geography. The initiative is described as regional; however the definition of "region" can be defined in two ways. First, as RGGI intended; the region is a geographical area defined as the northeast, which extends south to include Delaware, Maryland and Pennsylvania. All three states are within the PJM marketplace. Second and more significant, a region is defined by its economic marketplace. In this respect, Delaware is not part of the northeast and is why this initiative should be of great concern to Delaware. Delaware's energy providers and generation suppliers compete in PJM. No other participating state (except NJ) in RGGI competes in PJM and for these states, all stakeholders (suppliers/consumers) in their respective Independent System Operator (ISO) regions (ISO's) are included. In PJM, Other than New Jersey, Delaware will be the only participating state in PJM, and therefore its generation sources will be disproportionately impacted by this initiative. Pennsylvania and Maryland are not participating and maintain the status of observer.
- Regional Impact: Attempts to regulate/reduce CO<sub>2</sub> emissions should be implemented on a national basis and by federal regulation rather than a regional initiative. Global warming and the impact of CO<sub>2</sub> emissions is not a local or regional issue. The RGGI initiative impacts northeast states and disadvantages the northeast energy suppliers and energy consumers (industry/commercial/residential) on an economic basis. Most State economies are weak and trying to attract or retain industry and jobs. RGGI on a regional basis contradicts these objectives.
- Delaware Impact: Delaware's economy is dependent on lower cost reliable energy derived from coal resources. Of significance, Delaware's % consumption of coal derived energy is the highest ratio among any states involved in RGGI.
- Sector Applicability and Emissions Credits: The energy generation sector is the only emissions sector in this initiative. Other sectors must be included. Further, the coal sector will be most impacted from a coal supply and energy supply perspective. For this reason, existing coal sources should be permitted to retain current emissions levels and as emissions cap & trade rules are derive, the credits should go to only those impacted, thus based on emissions and not MW generated.
- Delaware Generation Impact and Reliability: Delaware's generation portfolio includes 32% coal derived generation. Indian River is the largest coal generator in Delaware and the only major energy resource in lower Delaware. Adoption of RGGI as intended will have an impact on all Delaware coal generators and an impact to local energy pricing and energy reliability in lower Delaware.

- Delaware Economy: Economic impacts to coal generators will have an impact to Delaware as replacement power (which will come from upwind states in PJM) will result in substantially higher energy costs to Delaware because of transmission constraints within PJM. This will have an impact on Delaware's economy. In a report written by Charles River Associates ([Economic Consequences of Northeastern States Proposals to Limit Greenhouse Gas Emissions from the Electricity Sector, July 20, 2004](#)), impacts to Delaware include a potential for: non-energy household consumption reductions of \$1,374/yr., loss of 1,746 jobs, and an increase in energy prices up to 52%.
- Delaware's ambient air quality: May not improve and may result in poorer ambient air quality because of emissions transport from replacement power.
- Implementation Schedules / Technology / Offsets: The RGGI initiative does not take into consideration that there are no viable technologies to reduce CO2 emissions. Therefore the only option is to shut down the source or provide offsets such as a carbon sequestration. RGGI must allow time for technology to develop and must allow offsets.
- The Governor's Energy Task Force (which included stakeholders from all sectors) has not endorsed reductions in CO2 emissions, and further, has recognized coal generation as a critical energy resource for Delaware. In addition, the task force has recognized the critical need to retain existing energy resources including coal derived generation to maintain a diverse energy supply to avoid dependence on one energy source, such as natural gas. Support to adopt CO2 reduction initiatives contradicts the Task Force findings and recommendations.

For these reasons, we recommend Delaware address these concerns through a stakeholder process and fully consider the economic implication of it's participation before proceeding. Stakeholders should include energy generators, energy distributors, consumers, the PSC, and possibly representation from PJM.

I hope these comments bring to light useful information and aid in your work. We look forward to meeting with you and discussing these issues in person in the near future.

Sincerely,  
Delaware State Chamber of Commerce



Robert W. Whetzel  
Co-Chair, DSCC Environmental Committee

C.c. John A. Hughes, Sec. DNREC  
James A. Wolfe, President, DSCC  
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