

Prettyman Mark A. (DNREC)

From: Horowitz, Alan B [alan.horowitz@astrazeneca.com]
Sent: Friday, May 06, 2005 12:19 PM
To: Prettyman Mark A. (DNREC)
Subject: Reg. 1144 -- AZ Comments

Mark,

Thank you for taking the time this morning to discuss issues relating to the emergency generator provisions of draft Regulation No. 1144. AstraZeneca's specific comments on the draft rule relate to 1) the Section 5 "Fuel Requirements" provision; 2) the definition of "New Generator," particularly with regard to the use of the "installation date" as the criteria for establishing the distinction between a "new " and "existing" generator; and 3) Section 7.3. A summary of our specific concerns, and our understanding of DNREC's position on these issues at this time, is provided below:

Section 5:

Section 5.1 states that any "diesel fuel" or "biodiesel blend" combusted in a *generator* shall have a sulfur content of "equal to or less than 0.05% by weight." We are concerned that as currently drafted, the regulation could be interpreted as requiring the USE of such fuel as of the effective date (or at least 3 months after that date). If construed in this way, the regulation could have the undesirable -- presumably unintended -- consequence of 1) forcing facilities to install separate, stand-alone fuel tanks to service emergency generators where these generators are currently, and more efficiently and safely, served by larger, dual-use tanks (i.e. also serving other fuel-burning equipment such as boilers subject to Regulation No. 8 fuel content requirements); 2) forcing a wasteful and costly disposal of existing, previously-purchased fuel that can not practically be used prior to the effective date or, 3) creating an undesirable incentive to burn oil in lieu of other fuels, particularly as the ozone season approaches.

Based upon our conversation, it is our understanding that DNREC is considering a modification to the draft rule that would clarify, through changes to Section 5.0 or the recordkeeping requirements of Section 6.0, that the sulfur percentage requirements are applicable only to fuel **purchased for use in the regulated generator** (as opposed to consumed) starting 3 months after the effective date. In this way, the change-over to Section 5-compliant fuel would be assured over time, as existing fuel is utilized and fuel purchased after the effective date is integrated, but would avoid the confusion and undesirable consequences outlined above. For this reason, AstraZeneca strongly encourages DNREC to modify the rule in this manner.

Section 2.0 -- Definition of "New" Generator:

As drafted, the proposed rule defines a "new" generator as one that is "installed or repowered on or after [the effective date]." As discussed by phone, AstraZeneca is concerned about the confusion, burden and inefficiency that might result in the situation where a generator has been purchased and/or a Regulation No. 2 construction permit application has been submitted prior to the effective date but, due to timing delays associated with either the acquisition or installation of the equipment and/or the receipt of a construction permit, the installation can not occur prior to the effective date. For purposes of avoiding the risk of "sham" purchases or the submittal of Regulation No. 2 applications merely in an effort to avoid requirements associated with "new" generators, it would be reasonable for the Department to require 1) evidence of purchase (but not physical possession) or submittal of a Regulation No. 2 permit application as of the date that Delaware formally proposes Regulation 1144 for final adoption; and 2) installation within a specified time frame after the effective date.

Accordingly, we respectfully request that the definition of "new" be modified to read: *"A generator which is installed after the effective date, except for generators which have been purchased (although not necessarily physically acquired), or for which a Regulation No. 2 construction permit application has been submitted (whichever is later) before [start date of formal notice of intent to finalize rule]. Generators within the scope of this exception shall be considered "existing" generators if they are installed within the earlier of 12 months of the effective date or receipt of a Regulation No. 2 construction permit.*

Section 7.3 Emissions Verification:

1. The applicability of this provision to *emergency generators* is unclear. We recommend that the regulation specify the type of data, if any, required to verify emissions for emergency generators. For example, with regard to "existing generators," preventative maintenance records would appear to be adequate to demonstrate compliance with Section 3.1.1. Similarly, with regard to "new generators," the certification that the unit meets the currently applicable US EPA non-road emissions standards would appear appropriate.

2. The timing for submittal of such data is ambiguous. We would recommend that Section 7.3 be modified to state that the "following data shall be available for Department review upon request." This approach would ensure DNREC access to the relevant information, but avoid the need for actual data submittals at unspecified time frames.

Thank you again for discussing these issues with us today and for the Department's consideration of these comments. Please do not hesitate to contact me directly at (302) 886-4755 to discuss these issues further.

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