Meeting Minutes for NSR Workgroup meeting – June 27, 2006

Those in attendance:

Ron Amirikian, DNREC	Rose Nino, EPA R3
David Bacher, NRG	Steve Ours, DNREC
David Campbell, EPA R3	John Peronti, GM
Todd Coomes, RLF	Gene Pettingill, DNREC
Al Denio, Sierra Club	Ravi Rangan, DNREC
John Holmes, AEMS	April Uhlenburg, Dixon Environmental
Paul Jann, DuPont	Tom Webster, Daimler Chrysler
Amy Mann, DNREC	Robert Whetzel, RLF
Deanna Morozowich, DNREC	Stu Widom, Conectiv

OLD BUSINESS:

The Department asked for comments on the minutes of the March 14, 2006 NSR committee meeting that were posted on the NSR website. The Department suggested that all committee members review the minutes and submit changes/comments so that the meeting minutes can be finalized on Monday July 10, 2006.

NEW BUSINESS:

The purpose of this meeting was to discuss the draft regulation that was sent out to the committee members (A copy of the draft version of Regulation 1125 is also available on the NSR website).

The Department noted that some portions of the EPA reforms have been adopted by reference. The EPA reforms will apply to non-criteria regulated NSR pollutants for modifications and to all regulated NSR pollutants for new construction. The FEL will be mandatory for criteria air pollutants while other regulated NSR pollutants can elect to have a voluntary FEL. The Department pointed out that once a facility has a FEL, it will become mandatory. The Department also noted that PM2.5 is not reflected in the draft only non-attainment ground level ozone is. The Department would like assistance from the committee to make it more user friendly.

At this time, there is no definition for the effective date for the FEL. The Department is also looking for assistance from the EPA about how to adopt EPA regulations into the regulation by reference.

One committee member stated that it was interesting that the Department placed the federal reforms for non-criteria pollutants in the draft. The Department pointed out that we believed this made the regulation less complex and that it was of little import since there were few such major facilities in Delaware. The committee member also questioned the definition of "Building, structure, facility, or installation" and primarily

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what would constitute a contiguous property. The committee agreed this definition needs clarity.

One committee member pointed out that the definition of "actual emission" needs clarity and should read "…24 month time period…" The committee believes that the same time period should be established for each emission unit. The words "All" and "Each" were debated so the Department stated that a legal review was necessary.

One committee member questioned if this regulation applies to product increases without making modifications. The response was yes. The committee member questioned what part of the population was well-controlled. The definition of well -controlled has been changed to have more well -controlled facilities and the amount is a reasonable percentage. The committee stated that a draft was sent to a facility and this draft regulation needs more work. It needs rewritten and communicated better. The Department stated that there is nothing that prevents a facility from calculating their FEL now. The committee member disagreed. The facility doesn't know what is considered BACT and what is not BACT. As an example, the committee member asked what BACT is for a boiler and stated there is too much uncertainty for the rule. The rule does not state how much more monitoring and testing may be needed. The regulation needs clarity as it is open to judgment and it is difficult to communicate. The committee member stated that the regulation was difficult for management to understand and asked if feedback (in an advisory capacity) would be accepted by the Department. The Department stated that comments would be accepted and agreed to a suggested thirty day comment period. The committee members pointed out that more than thirty days would be needed to decide what this regulation means and be considered by the chamber of commerce.

Another committee member stated that some of the language looks similar to a Title V permit and believes that this language doesn't need to be duplicated. The Department agreed that this language needs to be removed and clarified.

Another fundamental issue is an emission cap with growth provisions. A committee member pointed out that there are no provisions in the draft. The Department stated that controls could be put on. The committee believes that will be difficult as a modification will require time and a permit and that is not clarified in the regulation.

The Department reminded the committee that last meeting it was stated that the timeframe for the two regulations is off but the Multi-P regulation should be drafted prior to the changes to NSR (Reg. 1125) and will answer many questions of EGU sources. The threshold set would determine or set the FEL. After discussion, the committee members again questioned why the Department has still not sent draft regulatory language to the EPA for review and comment. The Department is not comfortable with submitting an incomplete draft to the EPA for comment. The Department also stated that the Delaware FEL concept is unique, in that it is different from what other states are doing. The Department reminded the committee that EPA representatives have sat on the committee since inception. The EPA representatives responded by stating that the idea of the FEL

has been submitted into the national office. The concept has also been presented at the STAPPA/ALAPCO meeting. The EPA believes that the proposal needs to be more developed and that there may be legal issues.

The committee members believe that the regulation should receive a legal interpretation, particularly in regard to court opinions seemly barring the use of "allowables PAL's". The Department stated that the regulation (draft) has been reviewed (in the context of the reforms) by the Delaware Department of Justice (DOJ). Several committee members stated that they would like to hear the interpretation.

One committee member suggested that some time be given to find a workable solution – not putting anyone out of business but still having emission control. As an example, it was stated that vinyl chloride emissions were reduced and no one was put out of business. At the time, the committee member believes that DNREC was caught in the middle. Another committee member responded by stating that as a result one PVC company did go out of business and that technology forcing regulations based on sound science are necessary. It was suggested that the problem be identified and the science be developed to solve the problem. Historically, the potential-to-emit has been capped. Some committee members agreed that there is a need to protect air quality, but NSR is not the place to do it and an EPA interpretation is needed as concerns exist.

One committee member would like to know what is considered to be controlled versus well-controlled. The committee member requested that a table be put together for the meeting. The Department responded that task would cover hundreds of units and cannot be done in a matter of a few weeks. The committee member believes that there needs to be a mechanism to communicate this regulation more effectively. The Department agreed as there are areas for judgment and a compliance management system needed to be developed.

One committee member questioned 4.4.1.6.2 of the draft by stating that the ratio will change due to nonattainment offsets. The committee member believes that ratio should be current.

Another committee member questioned where to get an offset for 1:1 if a facility emits a non-criteria regulated NSR pollutant. The Department stated that the facility can opt-in for a FEL. The Department thought the question was a good one and needs adjustment.

Another committee member questioned the public purpose in establishing a FEL. The committee member believes that the public does not have enough knowledge of a facility to propose a FEL level. The public should be involved to comment only and that the Department along with the facility should set the FEL.

One committee member stated there was a typographical error in the fourth line of the first paragraph. The Department thanked the committee member and stated that the typo would be corrected.

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One committee member asked if there were any other deadlines being imposed since Delaware missed the 1/2/06 deadline. The Department explained that since DE missed the deadline, the EPA is supposed to send out a letter to the Department starts the sanction clock (an 18 month period). To date, a letter from the EPA has not been received so the Department would like to stay focused and still on track with the FEL. The EPA representative on the committee stated that West Virginia has measures similar to the NSR reforms but most other states in Region III are taking a hybrid approach. The Department proposed that the committee provide informal written comments by the close of business on Friday, July 28, 2006 on the draft version of Regulation 1125.

One committee member stated that the time period established by the Department was burdensome because Title V semi-annual reports for facilities are due soon and asked if the Department would reconsider the timeline. The Department responded by canceling the meeting scheduled for Tuesday, July 18, 2006 and stated that the thirty day comment period on the draft version of Regulation 1125 should be ample enough to provide comments. The Department plans on consolidating all comments received and posting them on the NSR website. A response to some of the comments will also be provided in the next draft while other comments will be formally addressed in writing after the next meeting.

The Department advised the committee to periodically check the website as new meeting dates will be posted soon. The next regularly scheduled NSR Committee meeting is from 10:00 am – 12:00 pm in the Lukens Drive Office, Conference Room B on Tuesday, August 8, 2006.

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