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VIA EMAIL

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Dear Mr. Ramamurthy,

Please accept the enclosed comments regarding the proposed revisions to the Pennsylvania Department of Environmental Protection's Plan Approval and Operating Permit Exemption List noticed in the February 2, 2013 Pennsylvania Bulletin (43 Pa.B. 742) on behalf of the Group Against Smog and Pollution (GASP) and Citizens for Pennsylvania's Future (PennFuture).

If you have any questions or require any additional information please feel free to contact us.

Sincerely,



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BACKGROUND

Under section 5(a)(9) of the Air Pollution Control Act¹ (“APCA”) the Environmental Quality Board (“EQB”) may adopt rules and regulations to exempt sources and categories of sources “of minor significance” from APCA’s general requirement that stationary sources of air contamination obtain plan approvals.² The APCA does not define the term “of minor significance.”

Pursuant to section 5(a)(9), the EQB has adopted a regulation, set forth at 25 Pa. Code § 127.14, that explicitly exempts seven sources or classes of sources from plan approval requirements and authorizes PADEP to exempt “[o]ther sources and classes of sources determined to be of minor significance by the Department.”³ PADEP has determined various sources to be of minor significance, and has listed those sources in its Exemption List, Technical Guidance Document 275-2101-0030. Like the APCA, neither section 127.14 nor the Exemption List provides a definition or explanation for the term “of minor significance.”

The Exemption List was last revised in 2003. At the time, Pennsylvania had no unconventional gas development operations; consequently, emissions from oil and gas production facilities were relatively low. Accordingly, Category 38 of the 2003 Exemption List established a blanket exemption for all oil and gas exploration and production facilities and operations, except for gas compressor station engines equal to or greater than 100 horsepower or gas extraction wells at landfills.

Unconventional gas well development began in Pennsylvania (in the Marcellus Shale and other formations) shortly after the adoption of the 2003 Exemption List. For various reasons (e.g., increased engine use for horizontal drilling and high-volume hydraulic fracturing activities), emissions from unconventional gas development operations are significantly higher than emissions from conventional operations. Nonetheless, unconventional operations are, like conventional operations, are currently exempt from plan approval requirements under Category 38. Currently, Category 38 covers unconventional and conventional sources including wells; wellheads; condensate storage tanks; flares; non-road engines for drill rigs, pumps, and a host of

¹ 35 P.S. § 4001 *et seq.*

² 35 P.S. § 4005(a)(9). Plan approvals are generally required under section 6.1 of the APCA, 35 P.S. § 4006.1(a).

³ 25 Pa. Code § 127.14(a)(8).

other equipment used to drill and complete oil and gas wells; pits and impoundments used to store flowback and other drilling wastes; and wastewater processing and recycling activities. The exemption applies as long as the facilities and operations are not located at a major source.

On November 22, 2008, PADEP proposed revisions to the Exemption List, accepting comments for thirty days.⁴ PADEP did not adopt a revised Exemption List following this comment period. Rather, on May 29, 2010 PADEP proposed further revisions.⁵ With respect to Category 38, the 2010 proposed revisions would have exempted oil and gas facilities and operations only if they satisfied certain requirements. Specifically, facilities and operations would not be exempt unless combined emissions of NO_x, VOCs, and HAPs did not exceed specified threshold levels; flares would be exempt only if they did operate more than fourteen days; and storage tanks would be exempt only if they used particular controls to limit fugitive emissions.⁶ A facility or operation not satisfying these requirements would have to submit a request for determination (RFD) and, if the RFD was not approved, apply for a plan approval or seek coverage under a general permit. Because the 2010 proposed revisions would have made many non-road engines (for drill rigs, pumps, etc.) ineligible for exemption, PADEP in 2010 also proposed revisions to General Permit BAQ-GPA/GP-11: Nonroad Engines to accommodate the permitting of these engines.

After the close of the 2010 comment period, PADEP again declined to revise the Exemption List. Instead, on February 26, 2011 PADEP opened a second comment period on the 2010 proposed exemptions,⁷ stating that it was “particularly interested” in comments related to Category 38. The February 26, 2011 comment period closed on May 25, 2011. GASP, PennFuture, and approximately 1,225 other commentators submitted comments. We understand that as late as December, 2011, PADEP intended to issue a final revised Exemption List and a comment response document in early 2012. For the third time, however, PADEP decided against adopting a revised Exemption List. Instead, on February 2, 2013, PADEP proposed different revisions to the Exemption List and opened a fourth comment period.

⁴ 38 Pa.B. 6424.

⁵ 40 Pa.B. 2822.

⁶ Facilities and operations located at major sources remain ineligible for the exemption.

⁷ 41 Pa.B. 1066 (Feb. 26, 2011).

I. The Category 33.b.i and ii and 38.v and vii provisions excluding emissions from permitted emission units from plan approval exemption applicability determinations are contrary to law and must be removed.

Sections 33.b.i, 33.b.ii, 38.v, and 38.vii establish NOx and VOC emission limits and restrict the use of the permit exemption to sources with actual emissions below those limits. However, these sections also state, “[t]he emission criteria do not include emissions from sources which are approved by plan approvals or the general permit at the facility.” These provisions must be removed and emissions from existing emission units at the facility (both permitted and unpermitted) must be included in plan approval exemption applicability determinations. Failure to account for emissions from existing emission units is contrary to law because it relies on an impermissibly narrow definition of source; further it would compromise the department’s ability to implement its minor and major source air permitting programs and attain and maintain ambient air quality standards.

A. Excluding emissions from permitted emission units from plan approval exemption applicability determinations is inconsistent with the definition of source in the APCA and its implementing regulations.

The Department’s authority to exempt emission units from plan approval requirements is provided by §5 of the Pennsylvania Air Pollution Control Act,⁸ which allows the Environmental Quality Board to “[a]dopt rules and regulations to exempt sources or categories of sources of minor significance” from plan approval requirements.⁹ The Department’s proposal to exclude emissions from existing permitted emission units at a facility from plan approval exemption applicability determinations is contrary to both the APCA and the Department’s implementing regulations because it attempts to interpret the term “source” as referring only to individual emission units. However, both the APCA and the regulations implementing the APCA treat the term “source” more broadly to include the entire collection of emission units and pollutant emitting activities that make up a single source or facility.

While the APCA does not define the term “source,” it does define “air contamination source” as [a]ny place, facility or equipment, stationary or mobile, at, from or by reason of which

⁸ 35 P.S. § 4005.

⁹ 35 P.S. § 4005(a)(9).

there is emitted into the outdoor atmosphere any air contaminant.”¹⁰ The Pennsylvania Code includes an identical definition.¹¹ The regulations implementing the APCA also define “facility” as “[a]n air contamination source or a combination of air contamination sources located on one or more contiguous or adjacent properties and which is owned or operated by the same person under common control.”¹²

The Department’s *Guidance for Performing Single Stationary Source Determinations for Oil and Gas Industries*,¹³ confirms that this broader definition of source applies to both minor and major source permitting: Citing the 35 P.S. § 4003 definition of air contamination source, the oil and gas source determination guidance states, “[s]ingle source determinations arise when air contamination sources under common control are located on property which is contiguous or adjacent to another air contamination source. If the emissions from two or more air contamination sources meet the applicable regulatory criteria, they should be aggregated as a single source for air quality permitting purposes. If the emissions from the aggregated sources meet or exceed major source emission thresholds, they would be treated as a ‘single source’ subject to additional air quality permitting requirements under the PSD, NSR, and Title V programs.”¹⁴

Accordingly a “source” is not limited to individual emission units, but also includes “place[s],” “facilit[ies],” and combinations of air contamination sources that are contiguous and adjacent and under common control. The Department’s proposed language exempting “emissions from sources which are approved by plan approvals or the general permit at the facility” attempts to create a distinction between individual emission units and facilities that cannot be justified because the statutory and regulatory definition of “air contamination source” covers both individual emission units *and* facilities.

¹⁰ 35 P.S. § 4003.

¹¹ 25 Pa.Code § 121.1.

¹² *Id.*

¹³ PADEP, *Guidance for Performing Single Stationary Source Determinations for Oil and Gas Industries* (Oct. 6, 2012) available at:

[http://files.dep.state.pa.us/Air/AirQuality/AQPortalFiles/Final_Guidance_for_Performing_Single_Stationary_Source_Determinations_for_OG_Industries100612_\(2\).pdf](http://files.dep.state.pa.us/Air/AirQuality/AQPortalFiles/Final_Guidance_for_Performing_Single_Stationary_Source_Determinations_for_OG_Industries100612_(2).pdf).

¹⁴ *Id.* at 2, citing 35 P.S. § 4003 - definition of air contamination source.

B. Excluding emissions from permitted emission units from plan approval exemption applicability determinations is inconsistent with the Department’s plan approval exemption regulation.

Not only is the Department’s proposal to exclude emissions from existing permitted emission units at a facility from plan approval exemption applicability determinations inconsistent with the general meaning of source under the APCA and its implementing regulations, it is also inconsistent with the specific language of the plan approval exemption regulation itself.¹⁵ The Department’s plan approval exemption regulation states, “(a) [a] Plan approval is not required for the construction, modification, reactivation or installation of . . . (8) Other sources and classes of sources determined to be of minor significance by the Department.”¹⁶

By treating emissions from new proposed emission units separately from existing permitted units at a facility, the Department essentially attempts to exempt “modifications of minor significance.” However, § 127.14 does not provide an exemption for individual modifications or emission units. Section 127.14 is concerned with the significance of the *entire facility*, exempting not “modifications determined to be of minor significance” but “modifications of *sources* determined to be of minor significance.”

The plan approval exemption is limited to facilities determined to be of minor significance. Existing facilities that the Department has approved by plan approval or general permit are by definition *not* sources the Department has determined to be of minor significance. Therefore, consistent with the broad, facility-wide definition of source contained in 35 P.S. § 4003, 25 Pa.Code § 121.1 and 25 Pa.Code § 127.14, plan approval exemptions are generally not available for the construction, modification, reactivation or installation of emission units at facilities with existing plan approvals or general permits because these facilities are not sources determined to be of minor significance.

The proposed blanket exclusion of emissions from permitted emission units for plan approval exemption purposes is clearly inappropriate given the presumption that permitted emission units are not sources determined to be of minor significance. The Department may utilize the standard request for determination process to exempt the construction, modification, reactivation or installation of emission units at facilities with existing plan approvals or general

¹⁵ 25 Pa.Code § 127.14.

¹⁶ *Id.*

permits from plan approval requirements, but such an exemption may only be made after the Department has determined that the broadly defined facility at issue is a source of minor significance.

C. Excluding emissions from permitted emission units from plan approval exemption applicability determinations is inconsistent with the NNSR, PSD, and Title V definitions of source.

The Department's proposal is also inconsistent with the definition of source relevant to the Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Title V permitting programs. These programs define "stationary source" as "any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant."¹⁷ The Prevention of Significant Deterioration and Nonattainment New Source Review regulations define "building, structure, facility, or installation" as "all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) . . ."¹⁸ While federal Title V rules do not define "building, structure, facility, or installation," the definition of "stationary source" is to be interpreted consistently with the definition in the Prevention of Significant Deterioration program.¹⁹

Pennsylvania has received EPA approval to administer its own Prevention of Significant Deterioration, Nonattainment New Source Review, and Title V permitting programs.²⁰ In order to receive and retain EPA approval, state Prevention of Significant Deterioration, Nonattainment New Source Review, and Title V programs must be at least as stringent as their federal counterparts.²¹ The "at least as stringent" requirement applies not just to the plain language of state Prevention of Significant Deterioration, Nonattainment New Source Review, and Title V regulations, but also to the manner in which a state *implements* said programs.²²

¹⁷ 40 C.F.R. §§ 52.21(b)(5), 51.165(a)(1)(i).

¹⁸ 40 C.F.R. §§ 52.21(b)(6), 52.165(a)(1)(ii).

¹⁹ 61 Fed. Reg. 34,202, 34,210 (July 1, 1996), *see also* A1; *MacClarence v. U.S. EPA*, 596 F.3d 1123, 1127 (9th Cir. 2010).

²⁰ *See* 49 Fed. Reg. 33,127; 62 Fed. Reg. 64,722; and 61 Fed. Reg. 39,597, respectively.

²¹ *See* 40 C.F.R. §§ 51.166(a)(7)(iv), 51.165(a)(1), and 70.1(c), respectively; *see also, Mirant Potomac River, LLC v. U.S. Envtl. Prot. Agency*, 577 F. 3d 223, 227 (4th Cir. 2009). States are free to adopt a more expansive definition of source. For example, the Department's Nonattainment New Source Review regulations do not include a "same industrial grouping" requirement. *See* 25 Pa.Code § 121.1 (definition of facility), and § 127.201.

²² 42 U.S.C. § 7509(a).

Thus it is impermissible for the Department to interpret its Nonattainment New Source Review and Title V definitions of stationary source in a manner that results in a less stringent definition of source than the definition employed in the federal Nonattainment New Source Review and Title V programs. In other words, the Department's interpretation of stationary source under these programs must be at least as stringent as the EPA's interpretation of stationary source. For the Pennsylvania Prevention of Significant Deterioration program, the Department's duty to adopt an interpretation of "stationary source" at least as stringent as the EPA's is more straightforward. The Department adopts the EPA's Prevention of Significant Deterioration regulations "in their entirety" and incorporates them by reference.²³

The exemption proposal's attempt to limit the definition of "source" to individual emission units is inconsistent with the PSD, NNSR, and Title V definition of source. The air permit exemption list does note that sources subject to PSD, NNSR, or Title V requirements are not eligible for plan approval exemptions,²⁴ however, as described in the following section, the plan approval exemption will make it difficult as a practical matter for the Department to determine when a facility that has installed permit-exempt emission units has exceeded PSD, NNSR, or Title V applicability thresholds.

D. Excluding emissions from permitted emission units from plan approval exemption applicability determinations compromises the Department's ability to meet multiple legal obligations.

As a result of the Department's proposal to exclude emissions from existing permitted emission units at a facility from plan approval exemption applicability determinations, existing sources permitted under general permits or plan approvals could increase NO_x or VOC emissions by as much as 6.6 and 2.75 tpy respectively without providing notice to the Department. This would provide an avenue for air contamination source operators to, wittingly or unwittingly, circumvent regulatory requirements²⁵ and would compromise the Department's ability to meet several of its legal obligations, including its duty to determine whether a facility that has installed permit-exempt emission units:

²³ 25 Pa.Code § 127.83.

²⁴ PADEP, Air Quality Permit Exemptions (Jul. 26, 2003) at 8, *available at*: <http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-80104/275-2101-003.pdf>.

²⁵ 25 Pa. Code. §§ 121.9, 127.216; *United Refining Co. v. DEP*, EHB Docket No. 2007-100-L (Aug. 7, 2008) at 12; 40 CFR § 52.21(r)(4).

- has exceeded a PSD, NNSR or Title V applicability threshold;²⁶ or
- will violate applicable portions of a NAAQS control strategy or interfere with attainment or maintenance of the NAAQS.²⁷

II. It is unclear whether the proposed Category 38 exemption is limited to emission units at well sites.

Category 38 of the current air quality permit exemption list is limited to “Oil and gas exploration and production facilities and operations that include wells and associated equipment and processes.”²⁸ It is unclear whether the proposed revised version of Category 38 is also limited to “facilities and operations that include wells and associated equipment and processes.” Proposed revised Category 38 would apply to “[o]il and gas exploration, development, production facilities and associated equipment which meet [the requirements set forth in Paragraphs iii, iv, vi, vi and vii, as applicable].” The word “development” is a new addition, as is the definitional decoupling of covered facilities from wells. The Department must clarify the scope of the exemption.

III. The Department should provide guidance regarding what constitutes a “facility” for purposes of Category 38 and prohibit use of Category 38 where case-by-case source determination analyses are necessary.

The applicability of Category 38 depends in part on what constitutes a “facility” for the purpose of this exemption. For example, whether a facility exceeds the facility-wide NOx and VOC emission limits contained in 38.vii and 38.v respectively depends on what emission units are considered part of a single “facility.” Similarly, if the Category 38 exemption is limited to “facilities and operations that include wells and associated equipment and processes,” (see discussion in Section II, above) under what circumstances are a wellhead and other proposed emission units considered part of the same facility?

Further, the Department should prohibit use of Category 38 in instances where source determinations for a particular facility require a case-by-case analysis. Such complex, fact

²⁶ 40 C.F.R. §§ 51.166(a)(7)(iv), 51.165(a)(1), and 70.1(c).

²⁷ 40 C.F.R. § 51.160(a)-(b).

²⁸ PADEP, Air Quality Permit Exemptions (Jul. 26, 2003) at 6, *available at*: <http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-80104/275-2101-003.pdf>.

intensive analyses should, at a minimum, be subjected to the Department oversight and review provided by the standard request for determination process.

IV. The proposed daily and hourly NO_x emission limits for engines should be reduced to reflect emissions levels readily achievable by modern, catalyst-equipped engines.

Proposed sections 33.b.i and 38.vii would allow for the permit exempt installation and operation of stationary internal combustion engines emitting up to 100 lbs/hr and 1,000 lbs/day, of NO_x. The proposed hourly and daily NO_x emission limits are incredibly high given that modern catalyst-equipped rich burn engines are capable of meeting a NO_x emission limit of less than 0.2 g/bhp-hr, lean burn engines can meet a NO_x emission rate of less than 0.5 g/bhp-hr.²⁹ The proposed daily and hourly NO_x emission limits would allow for the permit-exempt installation and operation of exceedingly old, poorly controlled engines. Commenters suggest the Department reduce the hourly and daily NO_x emission limits to reflect hourly and daily emission limits achievable by relatively modern, well-controlled engines.

V. The proposed Category 38.viii annual NO_x emission limit is unreasonably high and would allow operators to circumvent compressor station permitting requirements.

The current air quality permit exemption list requires a plan approval for “gas compressor station engines equal to or greater than 100 HP.”³⁰ The Department proposes to replace this 100 HP limitation with section 38.vii, which would expand the plan approval exemption to cover all engines so long as combined engine NO_x emissions are “less than 100 lbs. /hr., 1000 lbs. /day, 2.75 tons per ozone season . . . and 6.6 tons per year.”

As noted in the previous section, modern catalyst-equipped rich burn engines are capable of meeting a NO_x emission limit of less than 0.2 g/bhp-hr, and lean burn engines can meet a NO_x emission rate of less than 0.5 g/bhp-hr.³¹ Under the proposed section 38.vii 6.6 tpy emission limit, a source could install and continuously operate lean burn engines with a

²⁹ PADEP, Technical Support Document for GP-5 (Jan. 31, 2013) at 15-30, *available at*: http://www.dep.state.pa.us/dep/deputate/airwaste/aq/permits/gp/Technical_Support_Document_GP-5_1-31-2013-final.pdf.

³⁰ PADEP, Air Quality Permit Exemptions (Jul. 26, 2003) at 6, *available at*: <http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-80104/275-2101-003.pdf>.

³¹ PADEP, Technical Support Document for GP-5 (Jan. 31, 2013) at 15-30, *available at*: http://www.dep.state.pa.us/dep/deputate/airwaste/aq/permits/gp/Technical_Support_Document_GP-5_1-31-2013-final.pdf.

combined power rating of 1366 HP or rich burn engines with a combined power rating of 3417 HP.

Currently, such large engines are typically installed at multi-engine compressor station facilities serving multiple well sites. These compressor station facilities are permitted under a plan approval or General Permit 5 and are required to meet a variety of testing, monitoring, and reporting requirements.³² The proposed revision to Category 38 would allow operators to avoid plan approval or General Permit 5 requirements by distributing permit-exempt engines at well pads throughout a production field rather than creating a single multi-engine compressor station facility. The Department affirmed the value of permitting, testing, monitoring, and reporting requirements for multiple compressor engines as recently as February 1, 2013 when the Department issued a revised General Permit 5. It is unreasonable for the Department to now propose revisions to Category 38 that would allow sources to avoid these same permitting, testing, monitoring, and reporting requirements by distributing engines throughout a production field.

Commenters suggest reducing the 6.6 tpy NO_x limit in Category 38 to 2 tpy. This would render it impractical for operators to circumvent compressor station plan approval requirements by distributing engines at multiple well sites, but would allow for the permit exempt installation of stationary engines at well sites for legitimate purposes. For example, small (~100 HP) compressor engines are often added to well sites with aging wells as well pressure declines.

VI. The Department should revise 33.b.iii and 38.iii to establish shorter leak repair deadlines.

Sections 33.b.iii and 38.iii state that:

If a leak is detected, the owner or operator of the facility shall quantify and repair the leak to operate with no detectable organic emissions consistent with 40 CFR Part 60 Subpart OOOO, or be less than a concentration of 2.5% methane as expeditiously as practicable, but no later than thirty (30) days after the leak is detected.

Subpart OOOO includes similar language regarding leak detection and repair for storage vessels, but establishes shorter leak repair deadlines: “A first attempt at repair must be

³² See e.g., PADEP, General Permit 5 (Feb. 1, 2013) at 13-16, *available at*: http://www.dep.state.pa.us/dep/deputate/airwaste/aq/permits/gp/GP-5_2-25-2013.pdf.

made no more than 5 calendar days after the leak is detected, [and] [r]epair must be completed no later than 15 calendar days after the leak is detected.”³³ The Department should incorporate the Subpart OOOO leak repair deadlines into categories 33 and 38.

VII. Commenters support the VOC emission control requirements for storage vessels.

The proposed section 38.iv requires permit-exempt storage vessels to be “equipped with VOC emission controls achieving emission reduction of 95% or greater.” Commenters support this requirement. To improve on this policy, Commenters suggest that the Department require or at least express a preference for the use of vapor recovery units (VRUs) as opposed to flares to achieve this level of control. While both flares and VRUs are capable of reducing VOC emissions by 95% or more, flares produce NO_x and CO while VRUs do not. For this reason, the Department should encourage the use of vapor recovery to meet this standard, and discourage the use of flares.

VIII. Unconventional gas emission units and pollutant-emitting activities that are required to report emission information in accordance with 25 Pa.Code Chapter 135 cannot be exempted from plan approval requirements under 25 Pa.Code § 127.14(a)(8) or 35 P.S. § 4005(a)(9)

In December 2011 and January 2012 the Department notified the owners and operators of “facilities engaged in unconventional natural gas development, production, transmission, processing and related activities” of the need to report air emissions from “compressor stations; dehydration units; drill rigs; fugitives, such as connectors, flanges, pump lines, pump seals and valves; heaters; pneumatic controllers and pumps; stationary engines; tanks, pressurized vessels and impoundments; venting and blow down systems; and well heads and well completions” pursuant to 25 Pa.Code §135.3.³⁴

Category 38 is intended to cover most, if not all, of the unconventional gas emission units and pollutant-emitting activities required to report emissions in accordance with Chapter 135. As discussed in previous section of these comments, the APCA and the Department’s regulations implementing the APCA limit plan approval exemptions to sources “of minor significance.”³⁵

³³ 40 C.F.R. §§ 60.5416(a)(9)(i) and (ii).

³⁴ 42 Pa.B. 620.

³⁵ 35 P.S. § 4005(a)(9), 25 Pa.Code § 127.14(a)(8).

However, Chapter 135 emissions reporting requirements are not applicable to “sources determined to be of minor significance by the Department.”³⁶

While neither the APCA nor its implementing regulations define “minor significance,” it is clear from 25 Pa.Code § 135.2(6) that sources of minor significance cannot include emission units and pollutant emitting activities required to report emissions in accordance with Chapter 135. Thus unconventional gas emission units and pollutant-emitting activities that are required to report emission information in accordance with 25 Pa.Code Chapter 135 cannot be exempted from plan approval requirements under 25 Pa.Code § 127.14(a)(8) or 35 P.S. § 4005(a)(9).

³⁶ 25 Pa.Code § 135.2(6).