



COMMONWEALTH OF MASSACHUSETTS  
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RESPONSE TO COMMENTS  
FOR THE  
AMENDMENTS TO  
REGULATIONS  
310 CMR 7.00 (DEFINITIONS)  
310 CMR 7.02 PLAN APPROVAL AND EMISSIONS LIMITATIONS  
AND  
310 CMR 7.03 PLAN APPROVAL EXEMPTION: CONSTRUCTION REQUIREMENTS  
FOR THE CONTROL OF AIR POLLUTION IN THE

BERKSHIRE AIR POLLUTION CONTROL DISTRICT  
PIONEER VALLEY AIR POLLUTION CONTROL DISTRICT  
MERRIMACK VALLEY AIR POLLUTION CONTROL DISTRICT  
METROPOLITAN BOSTON AIR POLLUTION CONTROL DISTRICT  
CENTRAL MASSACHUSETTS AIR POLLUTION CONTROL DISTRICT  
SOUTHEASTERN MASSACHUSETTS AIR POLLUTION CONTROL DISTRICT

JULY 2009

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## **INTRODUCTION**

In accordance with the provisions of M.G.L. chapter 30A, public hearings were held at the Boston office of the Department of Environmental Protection (MassDEP) and the MassDEP's Springfield regional office on Dwight Street on October 7, 2008 and October 8, 2008, respectively, to receive testimony on proposed amendments to the Air Pollution Control Regulations at 310 CMR 7.00. The public comment period remained open until 5 p.m. on October 20, 2008. This document provides a response to the comments presented during the public comment period.

## **BACKGROUND**

Massachusetts General Laws, Chapter 111, §§142A-142M is the enabling legislation that gives MassDEP the authority to adopt regulations to prevent, control or abate conditions of air pollution to protect public health and welfare. The Commonwealth's regulations for the control of air pollution are promulgated at 310 CMR 7.00 "Air Pollution Control."

## **RESPONSE TO COMMENTS:**

MassDEP held public hearings on the proposed amendments to the air pollution control regulations at 310 CMR 7.00; no oral comments were provided.

Written comments were received from:

- 1) John Moskal, Acting Manager, Air Program Branch of the US EPA Region I;
- 2) Robert A. Rio, Senior Vice President-Government Affairs, Associated Industries of Massachusetts (AIM); and
- 3) Shanna M. Cleveland Esq., Conservation Law Foundation.

AIM's comments were in support of the proposal, which MassDEP appreciates.

## **SUMMARY AND RESPONSE TO COMMENTS**

### *1. General Comment*

**Comment:** EPA recommends that MassDEP revise the Environmental Impacts section of the background document to include additional information that shows that these amendments will not violate state control strategies or interfere with attainment and maintenance of national standards.

**Response:** The proposed amendments to these regulations will not violate state control strategies or interfere with attainment or maintenance of national standards as these amendments will not make substantive changes in the stringency of emissions control for existing and new facilities.

Raising the Comprehensive Plan Approval (CPA) application threshold will not eliminate the BACT requirements for new and modified facilities subject to the Limited Plan Approval (LPA) application process instead of CPA, but will allow some applicants, currently required to complete the more detailed CPA application form, to use the less detailed LPA application form instead.

With respect to the change in what would be accepted as BACT for VOC and HAP emitting facilities, MassDEP reviewed and analyzed 373 plan approval applications received between July 1, 2004 and December 31, 2006. As a result of this analysis, MassDEP concluded that add-on control technology was not economically feasible for emission sources of VOC and HAP with proposed potential emissions of 15-20 tons per year. BACT for facilities of this size has consistently been approved as a mixture of pollution prevention techniques and short and long term material use or emission limitations. The proposed amendment would not change this but simply codify what is and has been past practice based on Top-Down BACT analyses for facilities in this size range.

## *2. Change to CPA threshold*

**Comment:** CLF recommends that the Department maintain the current threshold levels for de minimis, limited plan approvals and comprehensive plan approvals. CLF comments that raising the CPA threshold from 5 to 10 TPY (non-combustion emissions) would result in less thorough review of projects in this range, and an increase in emissions. If DEP decides to move forward with increasing the threshold, CLF urges DEP to monitor the impacts of this change in policy on air quality, public health and the environment.

**Response:** As discussed in the background document, and reiterated in the response to Comment No. 1, above, MassDEP predicts that there will be no difference in the emissions limitations resulting from the plan approval process as a result of raising the applicability threshold for CPA from five to 10 tons per year, compared to emissions limitations that would result in the absence of the threshold change.

### *3. Abatement of noise, odor and dust*

**Comment:** CLF commented that 310 CMR 7.02(8)(a)7. should be amended by adding the text in **bold** for clarity.

Amend 310 CMR 7.02(8)(a) by adding:

*7. Plan Approvals to Abate Violations of 310 CMR 7.01(1).* If an applicant is required by the Department **to submit** (or otherwise submits) an application for a plan approval under 310 CMR 7.02 in order to abate a violation (or potential violation) of 310 CMR 7.01(1), any emission limitation required in such plan approval shall be sufficient to abate said violation, even if said emission limitation is more stringent than an emission limitation that would otherwise be determined to be BACT.

**Response:** MassDEP agrees that CLF's suggested language clarifies the proposal. MassDEP believes, however, that the existing regulations, 310 CMR 7.02(7) and 7.02(5)(a)10., already address the application process by which plan approvals may incorporate conditions intended to remedy or prevent a condition of air pollution. To increase clarity, MassDEP has revised the proposed language under 310 CMR 7.02(8)(a)7. as follows:

*7. Plan Approvals under 310 CMR 7.02(7) or 7.02(5)(a)10.* Any emission limitation required in such plan approval shall be sufficient to eliminate the potential to cause a condition of air pollution, even if said emission limitation is more stringent than an emission limitation that would otherwise be determined to be BACT.

### *4. Consolidation of Previous Plan Approvals: 310 CMR 7.02(12) ( from EPA)*

**Comment:** EPA commented that applicability should be clarified, and limited to non-Title V sources [facilities not subject to 310 CMR 7.00: Appendix C] since Title V operating permits already perform the function of a consolidated plan approval. Furthermore, MassDEP should clarify whether a consolidated plan approval would supersede previous plan approvals.

**Response:** MassDEP inserted specific language in the final regulation stating that when a facility is subject to the operating permit program (310 CMR 7.00: Appendix C), the owner/operator may not use this regulation to streamline and consolidate their facility's applicable requirements.

With regard to the impact of the consolidated plan approval on preexisting plan approvals, 310 CMR 7.02(3)(l) Plan Approval Duration already states, in part that "...plan approvals are valid for the life of the emission unit or facility..." So, previous plan approvals are not superseded under these consolidation provisions. To address EPA's comment, MassDEP has inserted a new subparagraph in the final regulation, 310 CMR 7.02(12)(f) Conditions of Approval,5., whereby a list of previously issued plan approvals, emission control plans and other documents addressing the applicable requirements of the covered emission units must be included in the consolidated plan approval.

5. Consolidation of Previous Plan Approvals: 310 CMR 7.02(12) (from CLF)

**Comment:** CLF commented that DEP must require appropriate modeling and analysis to guarantee that applications for consolidation accurately represent whether 310 CMR 7.02(4) or 310 CMR 7.02(5) have been triggered. Also, as with other permitting actions, DEP should provide notice and sufficient time for public comment on draft approvals.

**Response:** The public hearing draft of 310 CMR 7.02(12) was revised to make it clear that where there is construction, substantial reconstruction or alteration associated with the request to consolidate the existing applicable requirements, the proper route would be to apply for consolidation separately from a construction permit under 310 CMR 7.02(4) or (5). With regard to the comment on providing public notice, the actions under review are at minor facilities. The sole purpose of these regulations is to consolidate the current requirements already contained in approval documents issued by MassDEP in accordance with our current plan approval regulations which do not require public notice at minor facilities. The final language follows:

(c) When a consolidation application is made in conjunction with an application to construct, substantially reconstruct or alter the facility under 310 CMR 7.02(4) or (5), the decision concerning consolidation will be made under 310 CMR 7.02(12) following issuance of the plan approval [310 CMR 7.02(12)(c)]