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310 CMR 7.00: AIR POLLUTION CONTROL

RESPONSE TO COMMENTS

November 2007

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 Springfield City Hall on March 20 and 21, 2007, 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 March 23, 2007. This document provides a response to the comments presented during the public comment period.

BACKGROUND

Massachusetts General Laws, Chapter 111, Sections 142A-142N is the enabling legislation that gives MassDEP the authority to adopt regulations to prevent, control or abate conditions of air pollution, and 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". The amendments, which the MassDEP is adopting and submitting to the US Environmental Protection Agency (EPA) as a State Implementation Plan (SIP) revision, are part of the effort to attain and maintain the health and welfare based National Ambient Air Quality Standards (NAAQS) for criteria pollutants. Several amendments correct typos or modify text to clarify intent. Specific changes include:

- Update the list of Massachusetts cities and towns to reflect changes in MassDEP regional boundaries
- Clarify the particulate emissions limits and maintenance/testing requirements to which engines and turbines are subject (310 CMR 7.02(8) and 310 CMR 7.04(4))
- Add a new organic material emission cap (<10 tons per year) to several sections of 310 CMR 7.03 to provide owners/operators of "small" facilities a mechanism to limit their facility's potential emissions and avoid reporting requirements of 310 CMR 7.12
- Corrections, updates of Source Registration (310 CMR 7.12) requirements
- Modify the Boiler – ERP requirements (310 CMR 7.26(30)-(36))

RESPONSES TO COMMENTS:

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

Daniel J. Brown, Chief, Air Permits, Toxics and Indoor Program Unit of the US EPA Region I
Robert A. Rio, Esq. Vice President, Government Affairs, Associated Industries of Massachusetts

SUMMARY AND RESPONSE TO COMMENTS

310 CMR 7.03

Comment: The USEPA is concerned that the amendments to 310 CMR 7.03 do not meet the six-prong test of their 1995 policy on ‘enforceable as a practical matter’ and they would not approve the modified regulation into the SIP as a way to limit a facility’s emissions. (*N.B.* In 1990, we submitted these regulations to EPA as a SIP revision.) Specifically, EPA’s comment is that MassDEP is not requiring notification from an owner/operator electing to utilize the emissions caps being adopted 310 CMR 7.03(15)(a)2., (16)(a)2., (19)(a)2. and (25)(b)1.b for the instances where the owner/operator may elect to limit the facility’s potential to emit (PTE) to avoid applicability to federal New Source Review (NSR).

Response: We disagree with EPA’s comment. We receive notification from the owners/operators whose facilities are subject to the reporting requirements of source registration (310 CMR 7.12). 310 CMR 7.03(5) requires the owner/operator to report the installation and emissions from an emission unit installed under 310 CMR 7.03 in the next required source registration/emission statement. The thresholds for which filing source registration is required are below the EPA’s major source thresholds of concern.

EPA’s policy requirement is unjustifiably burdensome and unrealistic to both the regulated community and MassDEP. Requiring notification from each owner/operator taking advantage of 310 CMR 7.03, of a facility otherwise exempt from the reporting requirements of 310 CMR 7.12, provides no environmental benefit.

The following is from Attachment 4 to the referenced 1995 EPA policy memorandum outlining the specific six-prong test referenced in EPA’s comment.

In part the guidance states:

"Based on these precedents, this guidance describes six enforceability criteria which a rule or a general permit must meet to make limits enforceable as a practical matter. In general, practical enforceability for a source-specific permit term means that the provision must specify (1) a technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation (hourly, daily, monthly, annually); and (3) the method to determine compliance including appropriate monitoring, recordkeeping and reporting. For rules and general permits that apply to categories of sources, practical enforceability additionally requires that the provision (4) identify the categories of sources that are covered by the rule; **(5) where coverage is optional, provide for notice to the permitting authority of the source's election to be covered by the rule;** and (6) recognize the enforcement consequences relevant to the rule."

In Massachusetts, any person who constructs, substantially reconstructs, alters or subsequently operates an emission unit which results in an increase in potential emissions of equal to or greater than one ton per year is required to submit a plans application pursuant to 310 CMR 7.02(4). In situations where the proposed operation can conform to the design and emission

limitations established in 310 CMR 7.03, a plans application is not required. Compliance with these requirements is not optional.

The recent amendments to certain sections of 310 CMR 7.03 were to establish 'mid-level' emission caps and usage limitations to provide the owner/operator of the smallest operations a streamlined way to eliminate their applicability to the reporting requirements of 310 CMR 7.12 and the annual compliance assurance fee for air quality required by 310 CMR 4.03. Many small operations, with assistance from the MassDEP's regional offices and OTA were submitting plan applications to establish emission caps below the applicable thresholds for annual compliance fees (310 CMR4.03). As stated above, the initial '7.03' permit by rule regulation was adopted in 1990 and to require notification from owners/operators as of 2007 is unnecessarily burdensome to both the regulated community and MassDEP with little or no environmental benefit.

310 CMR 7.26(30)-(36)

Comment: Associated Industries of Massachusetts' (AIM) comment is directed to the schedule of when Ultra Low Sulfur Distillate (ULSD) fuel oil is required for all ERP-Boilers. Mr. Rio states that owners/operators of ERP subject boilers have already made their contracts with their oil suppliers for the next heating season and the date for requiring ULSD should be moved from July 1, 2007 to July 2008.

Response: MassDEP agrees with both comments. These regulations were delayed several times, and the proposed dates will be changed to July 1, 2009.

Comment: Mr. Rio, representing AIM, comments that he interprets the regulation (310 CMR 7.26(33)(a)4., to mean 'purchase or delivery' after that date, not the burning.

Response: Yes, MassDEP agrees that 'purchase or delivery' was the intent and parallels the phrasing in the recently adopted ERP regulation for engines and turbines (310 CMR 7.26.43(c)). The regulation will be amended to read in part..."no person shall accept for delivery for burning"...

Comment: Mr. Rio reiterated his suggestion that, for the purposes of applicability to 310 CMR 7.00: Appendix C (federally required operating permit program), the emissions threshold for major sources of NO_x be raised to 100 tons per year, as allowed for by Massachusetts' ozone attainment status changing from serious to moderate. Raising the applicability would allow more owners/operators to take advantage of the permit streamlining benefits of the boiler ERP program and eliminate the burden of the operating permit program.

Response: MassDEP appreciates your comment however MassDEP can not amend the operating permit regulations (310 CMR 7.00: Appendix C: Operating Permit and Compliance Program) based on a comment received on the boiler ERP regulations exempting

owners/operators of operating permit subject facilities from ERP, because the operating permit regulations were not part of the package.

Moreover, 1990, the federal Clean Air Act (CAA) was amended to include title V, which established the requirement that all major sources of regulated air pollutants have a federally enforceable operating permit. Title V does not independently establish applicability thresholds; it relies on applicability to other federal regulations such as New Source Review under section 111, Prevention of Significant Deterioration requirements in 40 CFR 52.21, New Source Performance Standards under section 111, National Emission Standards for Hazardous Air Pollutants (NESHAP) under section 112, and the Acid Rain Program under title IV and the definition of ‘major source’ as defined by these federal regulations. MassDEP implements this federally required operating permit program at 310 CMR 7.00: Appendix C. Therefore, MassDEP would need to change the applicability threshold of 310 CMR 7.00: Appendix A: Emission Offsets and Non Attainment Review (federal NSR program) to accommodate a change to the applicability section of the operating permit program to continue to have an approved operating permit program. However, the courts found that EPA’s decision to allow non-attainment areas to relax the requirements for new source review applicability, including major source thresholds, did not comply with the CAA. As a result, the applicable major source threshold for the operating permit program remains at 50 tons per year of NO_x.