



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



VIA ELECTRONIC MAIL AND FACSIMILE

February 17, 2006

U.S. Environmental Protection Agency
EPA West (Air Docket)
1200 Pennsylvania Avenue, NW
Mail Code: 6102T
Washington, DC 20460
Attention: Docket ID No. OAR-2005-0163
a-and-r-docket@epamail.epa.gov

Re: Connecticut DEP Comments on Proposed Prevention of Significant Deterioration, Nonattainment New Source Review and New Source Performance Standards: Emissions Test for Electric Generating Units, 70 FR 61081 (October 20, 2005)

Dear Docket Administrator:

The Connecticut Department of Environmental Protection (CTDEP) appreciates the opportunity to express its strong opposition to the U.S. Environmental Protection Agency's (EPA's) above-referenced rulemaking (the Rule).

The New Source Review (NSR) permitting program is an important element of Connecticut's strategy to attain and maintain the national ambient air quality standards (NAAQS). As a result of CTDEP's efforts to implement this strategy, we have seen significant decreases in our ambient emissions levels. Nonetheless, our location in the eastern airshed places us in the path of transported emissions levels so high as to often overwhelm emissions from local sources, thereby hampering our ability to attain compliance for all of the NAAQS. For these reasons, we have worked with EPA and other states in the region to improve both national and state regulations that influence emissions. We offer our comments on the Rule in this context.

The Rule proposes to change the test that determines the applicability of the NSR requirements for modifications at electric generating units (EGUs). EPA has proposed three alternative tests to the current approach, which is based on actual annual emissions. As explained below, it is our firm belief that implementation of any of the alternative tests will undermine our efforts to protect our state's public health and environment.

General Concerns

CTDEP has three concerns with the Rule as a whole:

Fails to provide national consistency. First, EPA states that the final applicability test resulting from the Rule will become part of the core mandatory minimum program elements for states implementing Part C and Part D major NSR programs.¹ EPA justifies the Rule as providing nationwide consistency in light of

¹ Rule at Part IV.G.

the Fourth Circuit's decision in *Duke*.² And yet, EPA points out, quite properly, that states may adopt more stringent requirements in their State Implementation Plans. As EPA's proposed maximum achievable hourly test and the maximum achieved hourly test are clearly not more stringent than the existing baseline determined by actual annual emissions, some states, especially those with nonattainment areas, will likely not adopt any test that may result from this proposal. Further, EPA has requested comment on limiting the final test to the geographic areas covered by the Clean Air Interstate Rule (CAIR) or areas covered by both CAIR and the Regional Haze program (BART).³ A limited geographic application of the Rule would not be in step with the purported goal of nationwide consistency.

CAIR and BART are inadequate substitutes to NSR. Second, EPA justifies this proposal as advancing the central policy of the NSR program -- to minimize emissions increases from source growth, not reduce emissions.⁴ Furthermore, the Rule preamble states, even if emissions increases from growth occur as a result of the Rule, emissions reductions from other programs, notably CAIR and BART, will "net out" any emissions increases that result from the proposed NSR program changes.⁵ It is unclear what authority EPA relies upon to balance emissions increases and emissions reductions among different programs. This approach is particularly troublesome given the concerns CTDEP and other states have expressed concerning the insufficient level of emissions reductions resulting from CAIR to address downwind transport of ozone precursors and particulate matter.⁶ What's more, while CAIR and BART may address nitrogen oxide and sulfur dioxide emissions from EGUs to some degree, neither CAIR nor BART require best available control technology (BACT) or lowest achievable emissions rate (LAER) determinations to control emissions. Thus, the suggestion that CAIR and BART will "make up" for the emissions increases that may result from implementation of a test in the Rule is questionable and disingenuous.

Vague and ambiguous. Third, EPA indicates its intention to publish "in the near future" a supplemental proposal that would clarify the emissions tests and provide regulatory language that includes such basic regulatory necessities as recordkeeping requirements. If, after fully considering the implications of the Rule as illuminated by comment, EPA chooses to move ahead, CTDEP expects EPA to publish proposed regulatory language for comment. Finalization of the vague, conceptual approach of the Rule without the proposal of specific language would be unusual and procedurally inadequate.

Specific Concerns with the Proposed Tests

EPA's first two alternative tests, the maximum achievable hourly emissions test and the maximum achieved hourly emissions test, would likely never be triggered, thereby resulting in significant, unreviewed emissions increases when EGUs are modified. In the Rule, EPA has not demonstrated why, from an air quality perspective, either test is preferable to the current test based on actual annual emissions. Significant problems associated with the implementation of either of these two tests include the following:

- In essence, both tests grant an unlimited lifespan to EGUs without the possibility of BACT review during that life. Typically, BACT for new sources is determined based on an assumed equipment lifetime. This equipment lifetime is used in calculating the expected cost/benefit of the equipment with respect to emissions reductions (measured in dollars per ton of emissions

² United States v. Duke Energy Corp., No. 04-1763 (4th Cir. June 15, 2005).

³ Rule at 61093.

⁴ Rule at 61088.

⁵ *Id.*

⁶ *See, e.g.*, comments submitted by CTDEP in Docket No. OAR2004-0076.

reduced). A long equipment lifetime typically results in a lower dollar/ton cost and increases the likelihood of a more stringent BACT determination. Thus, the Rule compromises the initial BACT determinations made for existing equipment and may create the need to re-evaluate the procedures that will be used in future BACT determinations for new sources.

- We disagree with the suggestion "good combustion" practices are BACT for carbon monoxide (CO) and volatile organic compounds and that use of such practices is assured by the economics of facility operation.⁷ BACT is source-specific and changes over time, and EPA should not preclude that advances in control technology may make add-on controls for NSR pollutants better or more prevalent. For example, add-on CO controls (*e.g.*, regenerative oxidation) are available, in use and satisfying BACT requirements on large emitters of CO. EPA regional offices have commented on, and recommended review of, add-on control for CO BACT determinations for EGUs. With respect to particulate, EPA considers BACT reviews for particulate at a modified EGU unnecessary because many utilities have particulate control devices in place. This contradicts EPA's statements in the *Proposed Rule to Implement the Fine Particle National Ambient Air Quality Standards*⁸ that note significant, recent advances in particulate controls. The rapid approach of the attainment date for the fine particulate NAAQS will likely encourage more advances in this area in the near future. However, implementation of the Rule would eliminate opportunities to apply such controls at the appropriate time. Furthermore, the existing NSR process creates the assurances that control devices and "good combustion" practices are indeed in place and working optimally through monitoring and recordkeeping provisions. The Rule fails to take into account the importance of such provisions.
- Both tests give an economic advantage to existing unit owners -- an advantage that does not exist under the current NSR applicability test. Rather than install new, more efficient and lower-emitting equipment, existing unit owners are likely to make life extending modifications to existing units without the benefit of BACT/LAER review, leading to higher actual annual emissions at existing units. Any person who might install new, lower-emitting units is placed at a comparative economic disadvantage.

EPA's third test, the energy output test, raises different concerns. To justify the output-based NSR applicability test, EPA references the benefits of state regulations that limit emissions from certain EGUs using an output-based standard measured in pounds per megawatt-hour of electricity produced. Included in these referenced regulations is Connecticut's regulation to limit emissions from distributed generators. EPA's discussion of the benefits from such output-based emissions limits juxtaposed with EPA's proposed output-based applicability test for NSR is misleading as it fails to distinguish between the use of output-based emissions as emission limitations versus output-based emissions as an applicability criterion. Rather than function to limit emissions, as is the case in the referenced state regulations, when used as an applicability test for NSR, output-based standards alone may allow for emissions to increase when an EGU changes its operation to become more efficient.

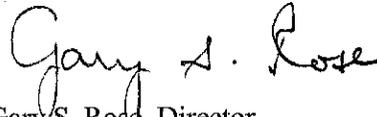
Our concerns are also represented in comments submitted in this docket by the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO). CTDEP participated in the development of those comments, and we encourage EPA to heed the recommendations therein.

⁷ Rule at 61088.

⁸ 70 FR 65984 (November 1, 2005).

CTDEP considers maintaining the integrity of its NSR permitting program as a key element of its stationary source air quality strategy. We cannot allow for backsliding within the NSR program or any other element of that strategy, particularly at a time when our limited resources are focused on reducing emissions to attain the 8-hour ozone NAAQS. As none of the Rule's proposed alternatives to the current NSR applicability test are clearly superior, and as each alternative test raises significant air quality concerns and creates the administrative cost of an equivalency determination, CTDEP urges EPA to maintain the current approach to determining NSR applicability. If you or members of your staff have any questions regarding this letter, please do not hesitate to contact me at 860-424-4152.

Sincerely,

A handwritten signature in cursive script that reads "Gary S. Rose". The signature is written in black ink and is positioned above the typed name and title.

Gary S. Rose, Director
Engineering and Technical Services Division
Bureau of Air Management

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