



January 5, 2009

Virendra Trivedi, Env. Engineer Manager
Division of Permits, New Source Review Section
12th Floor, Rachel Carson State Office Building
400 Market St.
Harrisburg, PA 17105-8468

Subject: Comments on DEP's Draft Technical Guidance Document: Air Quality Permit Exemptions

Dear Mr. Trivedi:

On behalf of its 24,000 members and customers, representing the spectrum of Pennsylvania industry, business, and commercial enterprises, the Pennsylvania Chamber of Business and Industry appreciates the opportunity to provide comments concerning the DEP's Draft Technical Guidance Document: Air Quality Permit Exemptions.

The publication of the Air Quality Permit Exemptions policy document is a responsible move to streamline and add uniformity to the Department's enforcement of Air Quality Regulations. The specificity in the document, adds some assurance for the regulators and the regulated community. The Chamber does however have concerns with some of the proposed changes in the document, and would like to make some recommended revisions.

The Department has not provided any accompanying regulatory explanation or rationale for why removing several permit exemptions is necessary. DEP has not indicated in the technical guidance if these changes will impact existing exempt sources or only new or modified sources. These changes could potentially cause a large number of facilities that have previously qualified for an exemption to submit RFDs (Request for Determination) or applications and create a large resource burden on the Department for no material air quality benefit within the Commonwealth. DEP should not require any source with an existing plan approval, or Title V or state-only operating permit to re-evaluate current exempted or trivial sources. The new exemption list or trivial list should only be required as new sources are installed or modified. Existing sources should be grandfathered and

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maintain their exemptions prior to the effective date of any technical guidance document changes.

The Chamber also expresses concern regarding the scope of these proposed changes. It is our understanding that DEP has chosen to eliminate the exemption from Plan Approval requirements for several sources and classes of sources without providing sound rationale why removing these exemptions is necessary to environmental protection or how it will benefit the citizens of Pennsylvania. The preamble published in the Pennsylvania Bulletin did not provide any rationale as to why these changes were necessary. These changes also conflict with several items in the DEP's Title V and State Only Operating Permit trivial activities source list. For example, Source #39 on page 18 of this draft Technical Guidance document, "Bench-scale laboratory equipment used for kinetic studies, mass/energy transport studies, chemical synthesis and physical or chemical analysis," is still listed as a trivial activity in DEP's proposal; however, now under Source #47 (on page 8 of this draft Technical Guidance document) an RFD is necessary to get an exemption to conduct these trivial bench-scale activities/experiments.

Impact to Research and Development Activities

There are many R&D facilities that operate in Pennsylvania. Typical R&D activities include small emission sources used to support the discovery and commercial development of new processes and technologies, process support of domestic and international manufacturing facilities to improve efficiency, and new product development and general technical support for company sales organizations. These activities often change frequently to quickly react to unpredictable company and customer needs and projects. Therefore, having appropriate permit exemptions is critical to efficiently responding to these needs in a timely manner.

In Section 1.C, exemptions #24 and #25 related to R&D activities under the existing guidance are proposed to be combined into the new #47 that requires the submittal of a RFD. With the potential for hundreds of small emission sources being changed (e.g., a lab conducting a different experiment) at an R&D site in any given year, the burden of submitting RFDs for these activities is real. The Chamber requests that the change requiring the automatic filing of a RFD be eliminated.

Also, the way in which the two R&D exemptions were combined into one appears to limit the exempt R&D activities to only those activities where bench-scale equipment is used. The Chamber recommends revising it as follows: "Research and development activities including, but not limited to, bench-scale laboratory equipment..." to allow flexibility to the wide range of R&D activities like small pilot unit operations that don't necessarily fall in the "bench-scale" category, but collectively still fall below the low emissions thresholds specified.

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Finally, the exemption rate for HAPs has dropped from 1 TPY to 0.5 TPY for a single HAP, and from 2.5 TPY to 1 TPY for a combination of HAPs. There is no specified rationale for this change, and it will only result in additional reporting burdens on the regulated community by requiring the submittal of more RFDs. The Chamber recommends the original levels of 1 TPY (single HAP) and 2.5 TPY (combination of HAPs) be retained to be consistent with existing operations that have already taken that exemption.

RFD Submittals

Under the proposed revisions, facility owners or operators must now submit RFD forms for certain categories of sources that were previously exempt from air quality permitting including: all internal combustion engines, site-wide, with combined NO_x emissions of <100 lb/hr, <1,000 lb/day, and <2.75 tons/ozone season and excluding peak shaving generators; bulk material storage bins; certain research and development activities; certain powder metal sintering furnaces; and remediation of gasoline or fuel oil contaminated soil, groundwater or surface water.

By submitting a RFD, a company, in essence, asks the DEP to make a judgment about whether the owner/operator must obtain a plan approval or operating permit and/or modify an existing operating permit in order to proceed with the proposed project. However, the owner/operator of a facility does not need to submit a RFD form when a source is listed in the Air Quality Permits Exemption List and meets conditions or thresholds specified for that source. Therefore, as long as an owner/operator maintains sufficient documentation at the site that they meet the exemption criteria, there is no rationale for requiring an owner/operator to go through the expense and formal paperwork to file a RFD, only to have the DEP respond by saying the source meets the exemption criteria.

Also, as stated earlier, if a facility has an existing source category that previously met the exemption criteria and did not need to file a RFD, they should be grandfathered from having to file a RFD unless they construct a new source in that category after the effective date of any guidance document changes.

Internal Combustion Engines

Proposed Source Exemption #45 would require owners and operators of any facility to seek an RFD for any internal combustion engine operating at their site. This proposal would capture portable, temporary welding machines and other maintenance equipment that a contractor may bring to a site to perform a one-time project. The existing Source Exemptions #4 and #6, plus trivial list item #19 effectively manage this situation in regard to trivial amounts of criteria or hazardous air pollutants that may be emitted from these small internal combustion engines.

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The proposed regulation could be read to require any facility with an internal combustion engine, including many facilities not currently regulated under any DEP permitting program (i.e. restaurant operations covered by Source Exemption #29), to obtain, for the first time, DEP authorization. Many of these facilities include exempt facilities that may operate a small emergency power generator per trivial list item #19. The Chamber recommends that DEP explain why this regulation is necessary, what the magnitude of emissions that might be impacted by this requirement is, and how facilities would implement such an RFD.

Inert Gases as Trivial Activity

In Section III.B.40, the source includes inert gases as a trivial activity, but the phrase “organic aliphatic hydrocarbon gases methane and ethane” has been specifically removed as a trivial activity. This deletion conflicts with the wording in Section I.B.35 that exempts inert gases and methane and ethane from a plan approval. There is no regulatory basis for requiring non-VOCs like methane and ethane from needing to be described in an operating permit application. The Chamber recommends that the original wording from the 2003 version be maintained.

Operating and Maintenance Practices

Section I.D of the draft revised guidance establishes a new requirement that to claim an exemption, any owner/operator must operate and maintain the relevant source consistent with good operating and maintenance practices, and “in accordance with practices based on the manufacturer’s specifications.” It is not clear why such a requirement is necessary, presuming that the source otherwise qualifies for an exemption based on insignificant possible emissions levels. Even if the Department chooses to retain this requirement, it should at least add the following language at the end of the exemption as drafted: “... to the extent such practices have a material impact on the source’s emissions.” For example, owners/operators should not lose an exemption by failing to service or replace a component specifically for the purpose of extending the life of some equipment, with no impact on emissions.

Thank you for the opportunity to comment on DEP’s draft Technical Guidance Document Air Quality Permit Exemptions. Please contact me with any questions.

Sincerely,



Gene Barr
Vice President, Government and Public Affairs