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August 30, 2004

Secretary

717-787-2814

U.S. Environmental Protection Agency
EPA West (Air Docket)
Attention E-Docket ID No. OAR-2002-0068
Mail Code: 6102T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Notice of Reconsideration of the Final Rules Pertaining to Prevention of Significant Deterioration and Non-attainment New Source Review: Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion [Docket ID No. 2002-0068 (Legacy Docket ID. No. A-2002-04)]

To Whom It May Concern:

The Commonwealth of Pennsylvania (“Pennsylvania”) appreciates the opportunity to submit these comments on the U.S. Environmental Protection Agency’s (“EPA’s”) notice of reconsideration (hereinafter “the reconsideration notice”) published on July 1, 2004, at 69 *Fed. Reg.* 40277. The reconsideration notice announces EPA’s intent to take comment on certain fundamental aspects of EPA’s equipment replacement provisions (“ERP”) originally published in the “New Source Review (“NSR”) Routine Maintenance Repair and Replacement Exclusion” published in the *Federal Register* on October 27, 2003. 68 *Fed. Reg.* 61248. That rule was subsequently stayed by a December 24, 2003, Order of the U.S. Court of Appeals for the D.C. Circuit, in which that court determined that the petitioners, of which Pennsylvania is one, would likely succeed on the merits of their challenge to the ERP.

We urge EPA to be receptive to these and other comments submitted in response to the reconsideration notice and to withdraw the ERP amendments and reinstate the NSR provisions in effect for routine, maintenance, repair, and replacement prior to October 27, 2003. If EPA continues to believe that reform of the NSR program is necessary, it should work with the States, Tribes, and local agencies to develop regulations that protect public health and the environment and respect State authority.

One of the primary aims of the NSR program is to ensure that economic growth will occur in a manner consistent with the preservation of existing clean air resources. To effectuate that purpose, Congress required state-of-the-art emission controls – “best available control technology” (BACT) in attainment areas and Lowest Achievable Emission Rate (LAER) in nonattainment areas – on all major new or modified plants. As existing plants come into compliance with BACT/LAER, the resulting decrease in overall emissions allows for the introduction of new sources into the air quality control region.

Accordingly, Congress intended that existing plants would implement controls if and when they made major modifications, thereby creating room for additional industrial sources.

Unfortunately, the newly promulgated ERP provisions do not adhere to that congressional intent since it removes the obligation of plant owners to install pollution-control devices if they undertake anything more than “routine maintenance” on their plants. This regulatory amendment provides that as much as 20 percent of the cost of replacing a plant’s essential production equipment can be spent and the owner still will be exempt from installing any pollution controls. In a fairly short time, a facility could significantly extend the operational life of an old emission source while still operating with old pollution control technology.

The new rule is unfair to those Pennsylvania businesses that have complied with the previous NSR requirements, and have spent large sums of money to bring their sources into compliance with air quality regulations. Nationwide, hundreds of power plants and other large polluting sources will be able to continue operating in perpetuity without the installation of readily available pollution controls. These plants will continue to emit thousands more of tons of pollution each year than if they installed emission controls, as intended by Congress. Therefore, the new rule unfairly confers an economic advantage upon those businesses that have succeeded in the indefinite operation of older, more polluting sources.

Implementation of EPA’s newly promulgated rule will allow modified sources to be operated without minimizing their impact on available clean air resources, thereby preventing the location of newer, cleaner burning plants in the same area without serious air quality degradation. As a result of this rule, it will be much more difficult for Pennsylvania to attract and locate new industry in the Commonwealth that would protect public health and the environment, while providing employment opportunities for its residents.

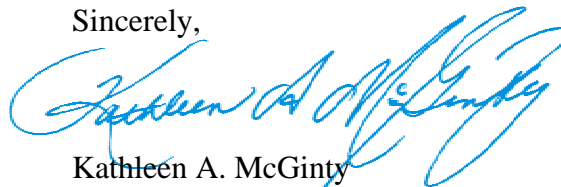
Under the Clean Air Act, Pennsylvania is required to meet the national ambient air quality standards for pollutants including ozone and particulate matter. Many counties in the Commonwealth are not in compliance with the new 8-hour ozone standard or PM_{2.5} standard. As a “downwind” state that experiences significant transboundary pollution, Pennsylvania will not be able to meet these standards if major sources, including power plants located in other states, are allowed to increase their emissions as contemplated under the ERP. Consequently, Pennsylvania businesses may be required to implement additional controls, placing them at a competitive disadvantage with businesses located in upwind states. This is of particular concern, especially in the Pittsburgh area where citizens and industries have implemented many clean air strategies to ensure that the area meets its obligations, while attracting new industries to fuel economic growth.

As an “upwind state” that experiences significant transboundary air pollution from Midwestern states, Pennsylvania’s citizens will be subject to increased pollution levels that will result from the implementation of this rule. Therefore, the additional pollution allowed under the new rule will lead to serious health effects (mortality and increased hospitalization rates) in sensitive populations (the elderly and individuals with cardiopulmonary disease) as well as significant adverse health effects (school absences and lung function decrements) in children.

In conclusion, Pennsylvania urges EPA to withdraw the ERP and reinstate the equipment replacement requirements in effect prior to the adoption of the new ERP and work with the States to develop regulations that protect the public health and environment.

Please contact either Nicholas A. DiPasquale, Deputy Secretary for Air, Recycling and Radiation Protection, at telephone 717-772-2724, or Joyce E. Epps, Director of the Bureau of Air Quality, at telephone 717-787-9702, should you have any questions on these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kathleen A. McGinty". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Kathleen A. McGinty
Secretary