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Rule: 2009-009-101-EN

Comments:

On behalf of American Acryl LP, I am providing the following comments on the proposed Failure to Attain Fee rule language. American Acryl operates an Acrylic Acid production plant in the HGB nonattainment area. The plant was constructed after obtaining a Nonattainment New Source Review (NNSR) permit, and as such, met the following requirements as part of the original permitting and construction:

- Installed Lowest Achievable Emission Rate (LAER) Control technology for NOx and VOC emissions
- Consumed Emission Reduction Credits to fully offset permit allowable emissions, and provide the required environmental offset ratio

American Acryl is one of very few companies that meet these requirements in the area, creating a unique perspective relating to the proposed language. This raises the following concerns:

First, having already installed LAER controls, there is limited opportunity to make further emission reductions to avoid being assessed future penalties. In contrast, other facilities in the area which have less stringent controls in place may be able to achieve further reductions in order to avoid the Section 185 fees. It seems to contradict the intent of the act, and in particular, Section 185, that the most well controlled facilities would be among the most likely to be subjected to the fees. The net affect is to punish the facilities that had the best controls during the baseline period while rewarding those facilities that had the least effective controls.

Secondly, for facilities that have been subjected to nonattainment review, the entire permitted potential to emit has been fully offset with Emission Reduction Credits, including the required offset ratio. Under the proposed rule language, facilities that have already completely offset more than their potential to emit would still be required to pay a fee for an amount above a baseline set on actual emissions. This causes the same emissions to be offset more than once within the SIP context. Again this seems to be punitive to the lowest-emitting facilities which have already fully offset their potential to emit, whereas other operations (even if unable to reduce emissions to avoid the fee) would only have to "offset" a fraction of actual emissions.

While we certainly understand the background and statutory language that drives these unintended consequences, we recommend that consideration be given to the following alternative in establishment of the baseline amount:

For units that have been authorized through Nonattainment NSR and have provided offsetting Emission Reduction Credits, the baseline amount shall be 1:1 portion of the tons of emission credits used to offset the permit allowable emissions.

This language would eliminate the punitive impact on operations that have already been offset and are among the best controlled sources in the area. In a competitive sector (such as electric generating units), this could also have an environmental benefit, by helping to drive power production to the cleanest operating units in the area.

Furthermore, these concepts are supported by the January 5, 2010 guidance provided by EPA. Specifically, in their response to the CAAAC Task Force Issues, they stated in response to Point E, that they concluded that emission reduction credits or allowances could be considered, so long as the program determined to be no less stringent. Since the offset provisions of NNSR in most cases would have required a permanent environmental offset greater than 20% of actual emissions in the baseline year, the NNSR offset provisions could be deemed to be more stringent.

This is addressed by EPA even more directly in response to Point G, in which they suggest alternatives that states may consider for sources constructed through NNSR after the attainment date. The suggested options included not requiring a fee since the sources didn't exist, adjusting the baseline, or establishing another alternative through stringency evaluations. We believe that it is in the state's economic and environmental interests to avoid any punitive actions that would discourage the development of well-controlled and fully offset operations from locating in the state.

We appreciate the opportunity to provide comments on the proposed rule language. Should you have any questions, please don't hesitate to contact me at 281-909-2651.

Sincerely,

Diane Erb  
Sr. Environmental Engineer  
American Acryl L.P.