



**Proposed Rulemaking - Nonattainment New Source Review
25 Pa. Code Chapters 121 and 127
Comments by: Manko, Gold, Katcher & Fox, LLP**

The Environmental Quality Board's proposed regulation entitled "Nonattainment New Source Review" published in the Pennsylvania Bulletin on February 6, 2010 (the "Proposed NSR Amendments") is more stringent than required under the federal nonattainment New Source Review ("NSR") program established for PM_{2.5}. The Proposed NSR Amendments differ from the federal PM_{2.5} NSR rule in several important respects that would render Pennsylvania's NSR regulations significantly more stringent than federal rules. Additionally, certain aspects of the proposed regulation are derived from existing Pennsylvania regulatory provisions that were developed specifically to address ozone nonattainment areas. Under the mandate of the Pennsylvania Air Pollution Control Act, 35 P.S. §4001 et. seq., the Board must specifically demonstrate that these provisions are necessary to achieve and maintain the National Ambient Air Quality Standard for PM_{2.5}.

Fugitive Emissions of PM_{2.5}: To the extent that the Proposed NSR Amendments would require the consideration of fugitive emissions in major source determinations, it is inconsistent with its federal counterpart, which provides that fugitive emissions shall not be included in determining whether a source is a major stationary source unless the source belongs to a category of sources specifically listed in the federal regulations. Since fugitive PM_{2.5} emissions may be present at a broad variety of industrial sources (relating to activities such as material handling, storage piles, paved and unpaved roadways), inclusion of fugitive emissions within a source's calculation of potential to emit may subject a large number of industrial facilities to NSR rules for PM_{2.5}. The Board has not demonstrated any need or air quality benefit associated with extending the NSR rules in this manner, and Pennsylvania should instead follow the federal rule for fugitive emissions of PM_{2.5}.

Aggregation of De Minimis Emission Increases: The Proposed NSR Amendments would require major sources to aggregate proposed de minimis emission increases with net emission increases over a 10-year contemporaneous period, in evaluating whether a significant net emission increase would result from a proposed modification project. Given the low significance threshold for PM_{2.5}, this requirement will likely result in NSR applicability for many small modification projects. In light of the high cost and relative scarcity of PM_{2.5} offsets, and the burden and delay associated with NSR permitting, this requirement will present a significant impediment to modification projects in Pennsylvania. Therefore, the requirement to aggregate de minimis increases of PM_{2.5} should be eliminated.

In addition to its comments relating to the more stringent than federal aspects of the Proposed NSR Amendments, the comments submitted by Manko, Gold, Katcher & Fox, LLP also contain requests for clarification. In particular, the Proposed NSR Amendments should be clarified to state that NSR requirements for PM_{2.5} and its precursors will be applied on a pollutant-specific basis. Additionally, the Board should clarify and amend its proposed revisions to existing provisions in 25 Pa. Code §127.203, governing sources of VOC or NO_x in the five county Philadelphia region.