Public Comment on the November 2014 Draft of BAQ-GPA/GP-5

Pursuant to 44 Pa.B. 7243, Pennsylvania Bulletin, November 15, 2014, I hereby submit the following public comments on the November 2014 Draft of BAQ-GPA/GP-5.

1. Advertisement of public comment on the current draft GP-5 revisions was defective due to failure to call attention to exclusion of the former Section I, Standards and Requirements for Wellheads.

The last time a draft revision of GP-5 was offered for Public Comment, it contained a section, (Section I at the time), for Standards and Requirements for Wellheads. It received numerous public comments. The Comment Response Document[1] included references to a forthcoming revision of the list of Exemptions from the requirements for Air Quality permitting[2], in which the intention was declared to retain the exemption for unconventional Oil & Gas wells (Exemption #38), provided they "meet the requirements" of 40 CFR Part 60, Subpart OOOO. Based on that activity, the section Standards and Requirements for Wellheads was deleted from the current draft. However, that revision from the previous public commentable version was not noted in either the PA Bulletin announcement of Public Comment on the current draft or in difference bars published showing the differences between the current draft and the prior draft offered for Public Comment.

Accordingly, the advertisement for Public Comment of the Technical Guidance containing current draft was ***deficient***. DEP has no alternative but to reopen the Public Comment period for the current draft GP-5 and readvertise the draft giving full disclosure of the differences between this draft and the previous draft.

2. Allowing all Minor Sources to be eligible for GP-5 is improper, since it provides no means by which the public can challenge the designation of a facility as a Minor Source.

The previous revision of GP-5 removed a cap on compression engine horsepower for eligibility for GP-5. This was the subject of numerous public comments. The Comment Response document published in response to this revision neglected to consider an extremely key point. A major issue in many Public Comments submitted concerning "full" Plan Approval applications has been whether the facility should or should not be considered a Major Source. There are cases on record where DEP has agreed with commenters that PTE was incorrectly calculated and the facility as applied for would be a Major Source. For instance, the operator of Welling Compressor Station in Washington County was obliged to withdraw one engine from the proposed construction in order to keep the facility within the margin for Minor Source. It must be emphasized that DEP had been prepared to issue a Minor Facility Plan Approval for Welling without that engine withdrawal until Public Comments were received. Consider what would have happened under the scenario allowed by the current draft GP-5. Welling as originally envisioned by the operator would qualify for GP-5. DEP would not critique the PTE analysis properly and would assent to the designation of Minor Source. There would be no Public Comment on this application. DEP would approve the full complement of engines originally envisioned for Welling, and would thus improperly permit an actual Major Source under GP-5. It is only Public Comment that prevented this from taking place.

DEP has consistently refused to consider the concept of ***evaluating the margin of error*** in PTE calculations, despite numerous instances where this exact issue was raised in Public Comment. Consider, for instance, a case where PTE for VOC is determined to be 49.5 tons per year and the Major Source threshold is 50 tpy. What is the margin of error in that 49.5 figure? If it is a mere 1 percent, we are now at the Major Source threshold. Under the terms of current draft GP-5, the public is not given the opportunity to make this argument. This is unacceptable.

DEP has consistently refused to consider relevance of blowdowns and other actual occurrences in calculating a

1 http://www.dep.state.pa.us/dep/deputate/airwaste/aq/permits/gp/January_31_2013-GP5_Comments_and_Response_Document.pdf

2 Current version "Air Quality Permit Exemptions", Document Number: 275-2101-003, http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-96215/275-2101-003.pdf

PTE margin of error. PTE numbers tend to be calculated based on numbers supplied by equipment manufacturers. Those numbers assume "normal operation" and "proper maintenance". Neither of these concepts is subjected to scrutiny for margin of error. In a case where actual emissions as determined by a facility operator have exceeded a Major Source threshold, this *still* does not result in changing the status of a facility as a Minor Source. Consider the case of Bernville Compressor Station, Berks County, permit # 06-05033. On October 29, 2012, this facility suffered an uncontrolled release of natural gas lasting 41 minutes. By the operator's own account, this resulted in a release of 61 tons of VOC in less than an hour — an amount that exceeds the Major Source threshold for VOC[3]. The operator calculated this amount by using a formula relating the amount of natural gas released, which could be easily measured, to an estimated VOC content in natural gas. This same calculation method can be used for any compressor station to estimate VOC emissions based on the amount of natural gas released during blowdown. It is unreasonable to believe that a typical compressor station will have 0 blowdowns per year. If a PTE for VOC is 48.5 tpy and the Major Source threshold is 50 tpy, how many blowdowns does it take to add up to another 1.5 tpy? ***The public has a right to make this challenge.*** That right is currently being denied by the exclusion of Public Comment from individual applications under GP-5.

It should be noted here that DEP cannot claim that this issue was "resolved" in response to the previous Public Comment on GP-5. In the meantime, the Supreme Court of the Commonwealth of Pennsylvania has issued a ruling concerning applicability of Article 1 Section 27 which changes the legal landscape. This is discussed more fully in point 4, below. Also specifically missing from the Comment Response document for the previous draft of GP-5 was specific consideration that there be some provision for the public to challenge designation of a facility as Minor Source. This issue is still relevant, notwithstanding lack of specific revision on this point between the current draft and the existing GP-5.

3. Permits issued under GP-5 are not federally enforceable.

Among the commenters on the previous draft GP-5 was the EPA, which objected that EPA has found that permits issued without Public Comment are not federally enforceable. In its Comment Response document, DEP replied by acknowledging that its permits issued under GP-5 were not federally enforceable, but "the emissions limits" are. This bureaucratic doublespeak can only leave a citizen shaking his head. This response is unacceptable, and is a clear failure by DEP to live up to its obligations under the Pennsylvania SIP (Clean Air Act State Implementation Plan). DEP has issued permits under GP-5 where the operator clearly indicated in its application letter that it was seeking federal enforceability.

How can DEP continue to issue permits under GP-5 that it acknowledges itself are not federally enforceable, and still pretend to be honorably acting as the "agent" of the EPA under the Pennsylvania SIP to enforce the Clean Air Act? This situation is disgraceful. DEP did not properly respond to the EPA's comments on the prior version of draft GP-5, and this issue is still relevant, notwithstanding lack of specific revision on this point between the current draft and the existing GP-5.

4. Failure to provide the ability of the public to challenge the designation of a facility as a Minor Source is a clear violation of Article I Section 27 of the Pennsylvania Constitution.

The plurality opinion of the Supreme Court of the Commonwealth of Pennsylvania in the Act 13 case[4] has clear consequences for the administration of the Pennsylvania Air Pollution Control Act, and thereby for the administration of GP-5. This opinion makes emphatic that Article I Section 27 of the Pennsylvania Constitution means what it says: ***the people*** have a right to clean air and pure water. That means in this case the people have a right to speak on the question of whether a particular facility is or is not a Major Source. Though it is clear that rights under Article I Section 27 are in addition to protections provided by US Clean Air Act, it is important to note, as above, that the EPA has endorsed the concept that the people have a right to be heard on the question of

3 Permit File 06-05033, letter, Texas Eastern Transmission LP to William Weaver, DEP, 11/20/2012.

4 http://blogs.law.widener.edu/envirolawcenter/files/2013/12/J-127A-D-2012oajc1.pdf

Major Source for a particular facility. Exclusion of Public Comment from Major Source determinations for compressor stations is a violation of Article I Section 27 rights, a violation of DEP's obligation under Article I Section 27 to act as trustee of those rights, and a violation of DEP's duty as administrator of the Pennsylvania SIP. At the time of issuance of the Comment Response document for the previous comment period on GP-5, this PA Supreme Court ruling had not been issued. Consequently DEP cannot claim to have properly responded to this issue in the previous Comment Response document. Even though this issue may not appear in the "difference bars" for the latest draft of GP-5, DEP must provide consideration of this issue in this comment period.

DEP has more than a duty to simply "respond". DEP must reintroduce a significant cap on emissions to be eligible for GP-5 that provides a significant margin of error between the cap and the thresholds for Major Source. DEP must provide for Public Comment on ***all applications*** for Compressor Stations under GP-5. Article I Section 27 provides us the means to assert that this issue of Public Comment on individual GP-5 applications has not been extinguished, and will not be extinguished until DEP grants us our rights.

5. Exclusion of wellheads from GP-5 provides no inspection mechanism for enforcement of 40 CFR Part 60, Subpart OOOO.

By including a section on wellheads in the previous draft of GP-5 opened for Public Comment, DEP appeared to be signaling it was prepared to do the right thing and rescind the notorious Exemption #38 for for Oil & Gas wells from the requirements of any and all Air Quality permitting. Unfortunately, to the contrary, DEP left Exemption #38 in place with an additional "requirement" that Oil & Gas wells adhere to 40 CFR Part 60, Subpart OOOO. What is the mechanism for verifying that the operator of an unconventional natural gas well is adhering to 40 CFR Part 60, Subpart OOOO? Requiring an unconventional oil or natural gas well to receive a permit under GP-5, as originally envisioned by DEP itself, would provide such a mechanism: the normal mechanism of GP-5 Air Quality inspections. As it stands, there is no mechanism. It is not even clear DEP's Bureau of Air Quality is routinely informed by the Office of Oil & Gas Management which well sites need to be checked for adherence to 40 CFR Part 60, Subpart OOOO. Is DEP acquiescing to the idea that if EPA "cares about" 40 CFR Part 60, Subpart OOOO, EPA should do these inspections itself?

6. DEP is failing to meet its obligations under Article I Section 27 of the Constitution of Pennsylvania by failing to set an emissions standard in GP-5 for ultrafine particulates.

Article I Section 27 does not cede to the EPA the definition of "clean" in the term "clean air" as found in the text of Article I Section 27. Evidence is accumulating that particulates are a form of pollution that is particularly dangerous to human health — both in their own right and as carriers of adsorbed air toxics. DEP is trying to have it both ways, by ceding to the EPA the definition of "Major Source" and then declining to act on the EPA's comments. DEP's standards (derived from EPA's standards) for particulates include standards only for PM2.5 and PM10. There is no standard for ultrafine particulates — particulates smaller in size than 1 micron — in spite of the fact that there is accumulating scientific evidence that such particles can be an extremely dangerous health hazard and can be emitted by compressor stations in significant amounts. It is imperative that DEP formulate a standard for exposure to ultrafine particulates, and that such a standard be included in the eligibility cap for GP-5. Failure to promulgate such a standard and subject it to Public Comment is a serious violation of DEP's responsibilities as trustee of the public's Article I Section 27 right to clean air.

Respectfully submitted,
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