water is life

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY | 5000 OVERLOOK AVENUE, SW | WASHINGTON, DC 20032

Office of the General Counsel

March 19, 2012

Via Electronic Mail

Ms. Cecily Beall
District Department of the Environment
Air Quality Division
1200 First Street NE, 5th Floor
Washington, DC 20002
cecily.beall@dc.gov

Re: Comments on Proposed New Source Review Rulemaking

Dear Ms. Beall:

The District of Columbia Water and Sewer Authority (DC Water) is pleased to submit the comments below in response to the District Department of Environment's (DDOE's) Notice of Proposed Rulemaking on New Source Review.

Sincerely,

Randy Hayman/mg

Randy E. Hayman
General Counsel

DDOE Should Promulgate an Actual-to-Projected-Actual Test Instead of an Actual-to-Potential Test

DC Water does not support DDOE's proposed promulgation of the "actual-to-potential" test in the definition of "net emissions increase" in § 299 and the applicability provisions in § 204.6(b). In its New Source Review reform rule promulgated in 2002, EPA specifically gave sources the option to use an actual-to-projected-actual test in lieu of the actual-to-potential test. *See* Prevention of Significant Deterioration and Nonattainment New Source Review Final Rule, 67 Fed. Reg. 80186, 80192 (Dec. 31, 2002) (promulgating federal actual-to-projected-actual test) (codified at 40 C.F.R. § 51.165(a)(1)(xxviii)) (NSR Reform Rule). EPA's rationale for this regulatory change is equally appropriate here. In the preamble to the NSR Reform rule, EPA noted that application of the actual-to-potential test results in overbroad NSR applicability. *Id.* Because this test attributes all possible post-change emissions to changes to existing equipment, it requires many of those changes to go through major NSR without taking into account operating history, even when such changes will not result in increased emissions. Often a unit will function no differently after a change than it did before the change, which provides sufficient reason to believe future emissions can be accurately projected. *Id.* at 80194. These accurate projections, with recordkeeping requirements like those in the federal rule, make measuring an emissions increase against a source's potential to emit unnecessary. Further, the actual-to-projected-actual test "remove[s] disincentives that discourage sources from making the types of changes that improve operating efficiency, implement pollution prevention projects, and result in other environmentally beneficial changes. Moreover, the end result is that State and local reviewing authorities can appropriately focus their limited resources on those activities that could cause real and significant increases in pollution." *Id.* at 80192. DC Water respectfully suggests that DDOE allow sources to opt for an actual-to-projected-actual test.

DC Water Opposes the New Minor New Source Review Provision

Section 209 of the proposed rules would impose both minor NSR permitting and substantive control requirements on sources with an increase in the potential to emit of at least five tons per year (tpy) of VOCs, NOx, SO2, PM10, PM2.5, or an aggregate of any Clean Air Act hazardous air pollutants. Proposed 20 DCMR § 209.1(b)(1)-(6). This is an unprecedented expansion of DDOE's air permitting authority in that any source meeting the above requirements must install pollution controls to meet LAER, BACT, MACT, another control approved by the Department in advance, or a technology approved by DDOE on a case-by-case basis under a top-down approach. DC Water requests that DDOE reconsider and drop this provision from the final rule because it effectively lowers the federal major source and major modification thresholds for sources subject to this provision to 5 tpy.

DDOE Should Clarify the Term "Collateral Emission Increase" in the New Minor New Source Review Provision

If DDOE chooses to retain the new minor new source review provision, DC Water respectfully suggests that DDOE clarify the term "collateral emission increase." Proposed Chapter 2 Section 209.1 applies to activities at stationary sources that result in "collateral emission increases, for a project that . . . results in an increase of the potential to emit rate equal to or greater than 5 tpy of any of the following . . . ." The term "collateral emission increases for a project" is not defined in the regulations. DC Water believes DDOE's intent is to require pollution controls on individual sources of air pollution that increase their potential to emit more than 5 tons of the regulated air pollutants. However, as stated, the regulation could be misinterpreted to require that any project, regardless of the number of sources of air pollution, that increases potential to emit by 5 tons of the regulated air pollutants would be covered by the subsection. This could result in small sources (i.e., engines less than 5 tpy) that replace several pieces of equipment at once, being aggregated together for the purposes of minor new source review. DC Water proposes that DDOE replace the term "collateral emission increases for a project" with "an emission increase for the new stationary source, existing stationary source or installed or modified air pollution control device on a stationary source that . . . ."

DC Water suggests the following revised text for Section 209.1:

> "Effective January 1, 2014, except as specified in 209.2, the requirements of this section are applicable to any source required to obtain a permit under § 200 to construct a new stationary source, modify an existing stationary source, or install or modify an air pollution control device on a stationary source that results in an emission increase for the new stationary source, existing stationary source or installed or modified air pollution control device on a stationary source that . . . ."

In addition, there should also be a provision to waive compliance with this provision if environmental, engineering or cost issues provide a compelling rationale for not requiring controls.

DDOE Should Publish a Manual of State of the Art Pollution Controls for the New Minor New Source Review Provision

DC Water also suggests that DDOE publish a "manual" of "state of the art" (SOTA) performance levels for use in proposed section 209 compliance. A SOTA manual would include emission limits and control measures to which sources could refer for purposes of compliance with proposed section 209. Providing the "manual" would reduce the regulatory burden on small sources as well as DDOE. This would both protect the environment, and at the same time streamline permitting in the same manner as the new general permitting provisions of these regulatory revisions. See proposed 20 DCMR § 200.6.The State of New Jersey, Department of Environmental Protection (NJDEP) is required to provide SOTA manuals per N.J.A.C. 7:27-22.35(c)(5). An example of the SOTA manual for boilers is attached for DDOE reference.

DC Water suggests the following revised text for section 209.3(d):

(d) An emission control technology or pollution prevention methodology approved in advanced as follows:

i. The Department will periodically publish technical manuals containing technology, methods, and performance levels which can be used by applicants for demonstrating advances in the art of air pollution control, after public input and comment. Such technology, methods and performance levels shall have been demonstrated to be reliable for similar air contaminant discharge parameters, and shall be available at reasonable cost commensurate with the reduction in air pollution.

ii. Once the Department has published a technical manual for advances in the art of air pollution control pursuant to above, any application submitted which shows compliance with the technical manual shall be considered to incorporate advances in the art of air pollution control for the source operations covered by the technical manual. The Department will periodically review and update the technical manuals, with public notice and input. If the Department amends a technical manual, only applications submitted after the final publication of the amended technical manual shall be subject to it.

The Provision that Sources Cannot Continue to Operate if Permits Expire is Too Harsh a Penalty

Proposed Section 200.5 provides that sources must file appropriate applications, including applications for renewal of any operating permit, if operations are to continue beyond the expiration date of an existing permit. Section 200.5. Note that the summary text before the proposed rule language states "... operating permits issued under 20 DCMR 200 must be renewed upon expiration to allow continued operation of the source." First, a question, does this section also apply to construction permits?

Second, while DC Water appreciates the intent of the proposed revision – to ensure that Chapter 2 permits do not expire – the penalty here (that a source cannot continue operation) is far too severe for a failure to file such a renewal application, without additional regulatory guidance and protections. To remedy this problem, DC Water recommends that DDOE adopt the following language from New Jersey's air regulations, Administrative Code 7:27-22:

200.5: Each owner or operator of a stationary source or device for which a permit is required shall file a timely and administratively complete application with the Department, including applications for renewal of any operating permit, if operations are to continue beyond the expiration date of an existing permit.

(a) To be considered timely, an application for renewal shall be received by the Department at least 12 months prior to expiration of the operating permit.
(b) However, the applicant is encouraged to submit the renewal application at least 15 months prior to expiration of the operating permit, so that the

(c) Department can notify the applicant of any deficiencies in the application. This will allow the applicant to correct any deficiencies, and to better ensure that the application is administratively compete by the renewal deadline. Only applications which are administratively complete by the renewal deadline will be eligible for coverage by an application shield.

(d) To be deemed administratively complete, an application for renewal of an operating permit shall include all information required by the application form for the renewal.

(e) If an administratively complete application for renewal is received by the Department at least 12 months prior to the date the operating permit expires, the facility will be covered by the application shield.

(f) An application shield provides that the owner or operator of a facility subject to this subchapter will not be subject to penalties for operating the facility without an operating permit during the time the application shield is in effect. An application shield is in effect for a facility if:

i. The owner or operator of the facility has submitted to the Department an application for an initial operating permit or for a renewal; and
ii. The application is administratively complete by the applicable deadline for submittal of the application.

b. The protection afforded by the application shield begins the date the application is due to the Department
c. An application which is administratively incomplete at the time of the application deadline applicable to the facility, but which is later completed, is ineligible for coverage by an application shield. Similarly, an administratively complete application which is submitted after the applicable deadline for its submittal is ineligible for an application shield.
d. An application shield does not relieve an applicant of the responsibility for compliance with all other requirements of this chapter, or any permit, order, or other legal document issued pursuant thereto.
e. An application shield terminates automatically upon either of the following:
    i. The Department's final action on the application for the initial operating permit or for the renewal; or
    ii. Failure of the applicant to submit additional information requested by the Department within the deadline established by the Department during the Completeness review.

(g) Within 30 days of receipt of an application for an initial operating permit or a renewal, the Department will:

a. Determine that the application is administratively complete, and so notify the applicant; or
b. Notify the applicant that the application is administratively incomplete, specify in writing the additional information required for the Department to commence review of the application, and provide a reasonable due date by which the applicable shall submit the information to the Department.

(h) Unless a facility subject to this subpart is covered by an application shield, the right to operate the facility terminates upon the expiration of its operating permit.

The Reporting of an NSR Applicability Analysis for Sources that Experience a Significant Increase, but Not a Major Modification is Unnecessary and Overly Burdensome

For any project that would result in a significant increase but is not a major modification, the proposed regulations require the submission of an applicability analysis demonstrating that the project is not a major modification to DDOE. Proposed 20 DCMR § 204.17. We believe that this situation would only occur if the source "nets out" of NSR through the use of "contemporaneous" decreases netted against the significant increase. There is no similar requirement under federal regulations. Requiring District sources to report this analysis places an unnecessary burden on sources not subject to major NSR requirements.

DDOE Should Clarify That the Regulations Allow Synthetic Minor Permits

Proposed section 210 adds new notice and comment requirements for Chapter 2 permits. DC Water supports this provision, and this largely reflects DDOE's current practices. DC Water requests that DDOE affirmatively acknowledge that with this provision, the Department now believes it can issue "synthetic minor" Chapter 2 permits. DDOE has taken the position (wrongly, we believe) that its current Chapter 2 regulations do not allow it to issue permits that create enforceable restriction on potential to emit ("synthetic minor permits") because its Chapter 2 permit regulations do not have specific provisions for notice and comment. DC Water does not concur with DDOE's position, inasmuch as the Chapter 2 regulations are SIP approved. 40 C.F.R. part 52 subpart J. In any event, with new Section 210, the alleged defect in DDOE's Chapter 2 regulations is remedied, and DDOE should affirmatively acknowledge that it now believes it can issue Chapter 2 permits that contain enforceable restrictions on potential to emit.

DC Water Requests Clarification of the Definition of Continuous Parameter Monitoring System

Under regulatory programs such as the New Source Performance Standards and Compliance Assurance Monitoring, process "parameters" tend to be values which can be monitored as surrogates for measuring actual emissions. For example, when controlling emissions from a flare, a permittee would be required to monitor combustion chamber temperature as a surrogate for VOC and CO destruction.

As a result, DC Water requests that DDOE modify the definition of "continuous parameter monitoring system" to clarify what a "parameter" is and examples thereof as follows:

> " . . . device operational parameters (for example, temperature, pressure drop, volumetric flow rate, device throughput) and other information (for example, gas flow rate, CO, total hydrocarbon (THC), O2, or CO2 concentrations), and to record . . ."

DC Water Requests an Expansion of the List of Equipment Exempt from Chapter 2 Permitting

Although not currently addressed in the proposed regulations, we request that the list of equipment categorically exempt from permitting under Chapter 2 regulations be expanded in order to reduce the regulatory burden on the regulated community as well as the Department.

Currently section 200.12 exempts specific fuel burning equipment which has a capacity of five million British thermal units or less per hour of heat input for which only gaseous fuels or distillate oils are combusted from the need to obtain an air permit. We propose that 200.12 be modified to state the following:

> "The Department may establish a list of sources and physical changes that are deemed not to need an air permit as required under this subsection. The Department will publish notice of its intention to establish or modify the list in the DC Register and will establish a comment period of at least 30 days. After the close of the comment period, the Department will publish the final list or any modifications to the final list in the DC Register."

An initial proposed list of sources and physical changes to be exempted from air permitting (based on Pennsylvania rules) is attached for Department consideration.

DC Water Supports the Inclusion of General Permits

DC Water supports source category permits as they are included in the proposed rule. Proposed 20 DCMR § 200.6. Similar general permits have worked well in the Clean Water Act context. These permits will allow covered sources to receive their permits quickly, and provide greater consistency in the requirements applicable to each source within a source category.

DC Water Supports the New PAL Permits, but DDOE Should Harmonize Its Regulations With Federal PSD PAL Regulations

DC Water applauds the inclusion of plantwide applicability limit (PAL) permits in the proposal. *See* proposed 20 DCMR § 208. PALs have been available under federal PSD regulations for several years, and have proven beneficial to emissions sources, regulators, and the public. *See* 40 C.F.R. § 52.21(v), (aa). With a PAL, a source can better react to changing

operational demands, and the public is served by capped overall emissions, which in some cases can be much lower under a PAL than would otherwise be allowed.

However, the DC PAL provisions are more stringent than the federal PSD PAL provisions in several material respects. DC Water respectfully suggests DDOE harmonize section 208 and applicable definitions in section 299 with existing federal PAL regulations.

- Under the proposed regulations, a source can only use the 24-month period immediately prior to the year a PAL application is submitted as its pre-change baseline, unless the source can prove that another 24 month period during the previous 5 years would be "more representative of normal source operation." Proposed 20 DCMR § 299 (definition of PAL baseline emissions). The federal PAL regulations allow a non-EUSGU source to choose any consecutive 24-month period within the last ten years. 40 C.F.R. § 51.165(a)(1)(xxxv)(B). This ten year look back, and the ability to choose any 2 years within that time period, allows sources to evaluate operations over a greater period of time and better determine actual emissions when accepting an emissions cap. It also allows sources to better consider the emissions fluctuations that occur during a normal business cycle.

- Under the proposed regulations, the same 24-month period must be used to calculate the baseline for each NSR pollutant. Proposed § 199 (definition of "Actual emissions"). There is no such limitation under the federal regulations. This tethering of emissions of unrelated pollutants is unreasonable, and unnecessarily eliminates some of the operational flexibility a PAL is designed to promote.

- A source must "promptly" submit reports of deviations from the PAL. Proposed 20 DCMR § 208.35(b). It is not clear what DDOE means here. Prompt is not defined. DC Water respectfully suggests semi-annual deviation reporting provides prompt reporting.

- DDOE must reduce a PAL if it determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to avoid an adverse impact on an air quality related value for a Federal Class I area. Proposed 20 DCMR § 208.12(d). Under the federal regulations, this authority to reopen a PAL permit is discretionary, not mandatory. 40 CFR 52.21(aa)(8)(ii)(b)(3). DC Water requests that DDOE align this provision with the federal PAL provision.