

THE JBG COMPANIES

March 16, 2012

Via Electronic Mail (cecily.beall@dc.gov) and Hand Delivered Hard Copy

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

Re: Comments to Proposed Rulemaking New Source Review Program
(20 DCMR 1.199 and 20 DCMR 2.200, 204, 206, 208, 209, 210, 299)

Dear Ms. Beall:

The JBG Companies (JBG) appreciates the opportunity to provide comments on the referenced District Department of the Environment (DDOE) Notice of Proposed Rulemaking for the New Source Review (NSR) Permitting Program. JBG has been an active owner and developer in the Washington metropolitan area for over 50 years. JBG is committed to continually improving the environment in the Washington metropolitan area and providing sustainable developments that create new employment opportunities through increased commercial and retail spaces, and by developing improved housing options for DC residents.

JBG strives to be a good environmental steward and recognizes the importance of evaluating potential emissions during the development/construction phase of a project and as part of upgrading existing facility operations. However, we feel that the Proposed Rulemaking requires clarification before JBG can understand the full impacts of the proposed regulations to our development plans as well as to future upgrades that are planned as part of the management of JBG's existing DC properties. We are unclear as to why the District of Columbia has chosen to be more stringent than the federal government and the Commonwealth of Virginia and the State of Maryland who are both situated within the same air shed and non-attainment area for ozone and particulate matter. Several of the proposed changes may result in increased owner liabilities as well as higher design and construction costs with little or no environmental benefits. In addition, several proposed revisions require clarification.

JBG respectfully submits the attached comments, identifying the areas in which we believe the proposed rule is unclear as well as recommendations on the proposed changes to the NSR

program. We respectfully request DDOE's response to our questions and we look forward to obtaining clarification so we can better evaluate and comment on the requirements to comply with a revised rule. We would be happy to have our representatives meet with DDOE to discuss our comments and recommendations.

Finally and in conclusion, as stated in our comments, we strongly request that DDOE consider implementing a synthetic minor permitting program, like adjacent jurisdictions have in place. We feel that a synthetic minor permitting program will enable DDOE to maintain compliance with and meet the requirements of the National Ambient Air Quality Standards set by the United States Environmental Protection Agency, as well as be beneficial to future development in DC.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Coulter", written in a cursive style.

Brian P. Coulter

cc:

Peggy Farrell, Environmental Consultant, at pfarrell@jbg.com

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JBG Comments and Recommendations to Proposed Rulemaking New Source Review Program (20 DCMR 1.199 and 20 DCMR 2.200, 204, 206, 208, 209, 210, 299)

1. ***Include a synthetic minor construction permit provision*** in Chapter 2 to avoid filing a Chapter 3 Part 70 Operating Permit and request §200.2 and §200.6 to be included in the State Implementation Plan to make the operational constraints federally enforceable. This would enable a facility to limit its potential to emit (PTE) below major source threshold levels through either a §200.1 construction permit, §200.2 operating permit, or §200.6 source category permit. The proposed §200.6 allows for U.S. Environmental Protection Agency (EPA) review and public comment, which currently the minor source operating permit does not go through the full public review process.

The need for a synthetic minor permit program was identified by an EPA Region 3 review of DDOE's air program in 2006. In a document prepared by the EPA Region 3 office (*State Program Review Framework for District of Columbia Department of the Environment*), it states that "plans are underway to change the District's Title V source fee structure and begin to permit an approximate 20 sources as synthetic minor sources" (page 8) and that "District personnel reported that they expect these additional Title V sources to accept operation limits which will enable these sources to be designated as synthetic minor sources. District personnel further indicated that emissions from these new Title V sources will be less than 80-percent of the major source threshold" (page 12). Based on this report, DDOE clearly agreed to the need for a synthetic minor permit but to date no enabling regulations have been promulgated.

Adjacent jurisdictions have synthetic minor provisions, which can help improve air quality by restricting the emissions of a pollutant for which there is a national ambient air quality standard (NAAQS). DDOE's current efforts to revise its NSR regulations would be an ideal time to implement a synthetic minor permit program.

2. ***Consistency with Adjacent Jurisdictions within the same non-attainment area.***

A. ***Major source permit requirements.*** Adoption of the DDOE's proposed changes to §204 will result in regulations more stringent than those adopted at the federal level. The explanation for this approach in the proposed rule is that the District is in a non-attainment area for ozone and particulate matter. However, the air quality in the District is no worse than that of Northern Virginia or the Baltimore-Washington metropolitan areas in Maryland, two areas which are experiencing high economic growth and increased development.

Under the EPA's 8-hour NAAQS for ozone, the entire region is designated a moderate non-attainment area. The Maryland Department of the Environment (MDE), as well as DDOE, continues to apply the major NSR applicability threshold of 25 tons of NO_x and volatile organic compounds (VOCs). However, the Virginia Department of the Environment (VADEQ) applies

the major source thresholds under the federal Clean Air Act for moderate non-attainment areas of 100 tons per year for NO_x and 50 tons per year for VOCs.

While MDE uses the actual-to-potential test for projects that involve only construction of a new emissions unit, it does apply the actual-to-projected-actual applicability test for projects that involve only existing emissions units and applies a hybrid approach for multiple types of emission units. VADEQ applies the same applicability tests as MDE, which is consistent with the federal regulation.

Applying a more stringent approach than surrounding jurisdictions places District facilities at an economic disadvantage and may play a critical factor in deciding the feasibility of future expansion within the District. JBG prides itself on providing increased housing and business opportunities in the District and by keeping development costs down and passing those savings onto to new District residents and businesses.

B. *Renewal time period for Chapter 2 construction and operating permits.* To decrease the frequency of required renewals by extending the allowable effective duration from three to five years is beneficial to both DDOE and the regulated community. However, the duration remains contingent upon “the period specified in the permit, not to exceed five (5) years”. Most importantly, the paperwork burden could be completely minimized by eradicating the renewal time period completely for Chapter 2 permits, consistent with adjacent jurisdictions.

3. *Clarify vague requirements in the proposed rule.*

A. *Source category permit.* §200.6 allows for the establishment of a source category permit (referred to as “general permits” in other jurisdictions) and criteria by which sources may qualify for this type of permit. However, it is unclear if this new subsection will:

- 1.) create a general permit with operational limits that are federally enforceable, and
- 2.) if so, could an existing major source obtain a source category permit as an alternative to a Title V operating permit.

Furthermore, it is not clear if §200.6(e) means a source category permit does not require the 30 days public notice period as specified in §210.4(f).

B. *Application fee.* Although this section (§200.10) has not changed from the current rule, the process for establishing the application fee should be spelled out in the proposed rule.

C. *Construction.* The added definition states “any physical change or change in the method of operation”. The proposed regulation should clarify what allowable activities are allowed prior to obtaining a permit, such as planning, ordering of equipment and materials, site-

clearing, grading, and on-site storage of equipment and materials. As a point of clarification, the federal definition states:

Begin actual construction means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change (40 CFR 52.21(b)(11)).

D. *Permit requirement.* §200.1 requires a permit before any “construction of a new stationary source, or the modification of an existing stationary source, or the installation or modification of any air pollution control device on a stationary source”. Since the proposed rule is adding the federal definition of “construction” which encompasses demolition and modification activities, it is not clear if a facility in the District must obtain another permit prior to the removal (i.e., demolition) of an emission source subject to §200.1.

E. *Operation of temporary source.* §200.3 states that it may allow for the temporary operation of a source for up to a month, extended month to month, to enable the initial evaluation of the operation or a source/device granted a permit under §200.1 or to enable for DDOE delays in issuing an operating permit. It is unclear if this means DDOE intends to issue a separate construction and operating permit for a temporary source, inspect the source to ensure it complies with the construction permit, and then issue an operating permit. Note that the DDOE permit applications are called “Application for Permit to Construct/ Operate” and there is not a separate permit application process for each phase.

4. *Include an exemption for temporary, portable sources.* §200.12 continues to remain the only allowable permit exemption and the proposed rule does not appear to include any exemption to operate a temporary source that otherwise would require a permit under §200. For example, a facility may be required to rent an emergency generator for a temporary time period (e.g., a week, over a weekend) due to an emergency outage or for a development project, or rent a boiler due to unforeseen, sudden operational issues. It is burdensome on the regulated community to require the preparation of an application when the unit is needed in an emergency and/or for a short, temporary time period, which could be over before DDOE issues a permit.

5. *Change the project PTE threshold for minor NSR sources.* §209.1 adds minor new source review standards for sources that require construction permits under §200 and for a project that causes an increase of the PTE rate of five tons per year or more for VOCs, NO_x, SO₂, PM₁₀, PM_{2.5}, and aggregate of any listed HAPs. This has the potential to have significant financial impacts on JBG development and property upgrade projects by requiring its minor sources, which cannot obtain federally enforceable limits currently in an operating permit, to

reduce its actual emissions by installing control technologies or using pollution prevention methods on small emission sources that aggregate to make up a “project”.

6. *Fix the definition.* The proposed rule adds a definition for “project”. Limiting the term to an existing major stationary source is confusing when §209.1 is based upon a project’s increase of the PTE, which is applicable only to a minor stationary source. How should a project be defined for non-major stationary sources?