

PROPOSED RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION

[25 PA. CODE CHS. 123 AND 145]

Interstate Ozone Transport Reduction; Advance Notice of Final Rulemaking

The Department of Environmental Protection (Department) is soliciting comments on changes it recommends be made to the draft final regulatory revisions establishing the Interstate Ozone Transport Reduction Program which was published at 29 Pa.B. 1319 (March 6, 1999).

The draft final regulations establish a program to limit the emission of nitrogen oxides (NO_x) from fossil fired combustion units with rated heat input capacity of greater than 250 MMBtu per hour and electric generating facilities of greater than 25 megawatts. This program, which is scheduled to begin in 2003, would replace the existing NO_x allowance requirements contained in Chapter 123 (relating to standards for contaminants) and would be applicable to facilities located in Pennsylvania and each state that significantly contributes to ozone nonattainment in Pennsylvania.

The draft final regulatory proposal does not include emission limitations for NO_x emissions from stationary reciprocating internal combustion engines and cement manufacturing operations. These emission limitations were included in the proposed rule. The Department is not planning to finalize these provisions at this time.

A. Background of the Draft Final Regulations

A number of significant events have occurred since publication of the original proposed rulemaking. In response to these events and to address issues raised during the public comment process, the Department has prepared draft final regulations for additional comment. While there is no legal requirement to provide an opportunity to comment on the Department's recommendations for final rulemaking, the Department believes further discussion will serve the public interest in this instance.

On May 14, 1999, the United States Court of Appeals for the District of Columbia Circuit overturned the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. *American Trucking Associations v. EPA*, 175 Fed. 3rd 1027 (D.C. Circuit 1999). On September 30, 1999, the United States Court of Appeals for the District of Columbia Circuit issued an order staying the portion of NO_x SIP call which required states to submit rules by September 30, 1999. *State of Michigan, et al., v. EPA*, No. 98-1487. On October 25, 1999, the EPA published a proposal to reinstate the 1-hour ozone standard in 54 Pennsylvania counties. On October 29, 1999, the United States Court of Appeals for the District of Columbia Circuit refused to grant a stay of implementation of the Section 126 Final Rulemaking. *Appalachian Power Co. v. EPA* (No. 99-1200) On December 16, 1999, the EPA published a proposed rulemaking related to "Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; 1-hour Ozone Attainment Demonstration for the Philadelphia—Wilmington—Trenton Ozone Nonattainment Area." On

December 17, 1999, the EPA granted the petitions of the Commonwealth and three other states under section 126 of the Clean Air Act.

While the 8-hour NAAQS for ozone is no longer applicable, the Commonwealth must still demonstrate attainment with the 1-hour NAAQS. The Commonwealth has included implementation of the Interstate Ozone Transport Reductions in Chapter 145 in the attainment demonstrations for the Pittsburgh and Philadelphia ozone nonattainment areas. For the Commonwealth to achieve the 1-hour NAAQS for ozone in the Philadelphia area, the emission reductions resulting from implementation of the Chapter 145 regulation must be achieved from facilities in this Commonwealth as well as in other states. As a result, the draft final regulations establish requirements for facilities located in all states that significantly contribute to nonattainment in this Commonwealth under the program.

In taking action on the petitions of the Commonwealth and three other states under section 126 of the Clean Air Act, the EPA has established emission limitations on facilities located in 12 states and the District of Columbia. A total of 392 facilities that emit NO_x will have to reduce ozone season emissions by nearly 510,000 tons from 2007 levels. These facilities are located in Delaware, District of Columbia, Indiana, Kentucky, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Virginia and West Virginia.

The draft final regulations represent the Commonwealth's continuing commitment to do its fair share in reducing ozone transport both within this Commonwealth and throughout the northeast. The EPA's actions on the section 126 petitions demonstrate its commitment to do its fair share as well. Finally, the proposed draft final regulations establish a mechanism to allow and support each neighboring state's commitment to address the ozone problem in this Commonwealth and throughout the northeast.

B. Summary of Advance Notice of Final Rulemaking Changes

The draft final regulations do not include the proposed "Subchapter B. Emissions of NO_x From Stationary Reciprocating Internal Combustion Engines" or "Subchapter C. Emissions of NO_x From Cement Manufacturing Provisions" contained in the proposed rule (25 Pa. Code §§ 145.101—145.144). The Department is not planning to finalize these chapters at this time. Only the NO_x Budget Trading Program contained in Subchapter A of Chapter 145 is being published for additional comment herewith (25 Pa. Code §§ 145.1—145.100).

A number of significant changes have been made to the NO_x Budget Trading Program. The significant changes are described in the following paragraph. A number of other technical amendments have also been made to the proposed rule.

One of the most significant changes to the proposed rule is the addition of § 145.100 (relating to applicability to upwind states). The Department made this change in response to comments. This section makes the NO_x Budget Trading Program applicable to facilities located in states that significantly contribute to ozone nonattainment in this Commonwealth. The only way for the Commonwealth to achieve the 1-hour NAAQS for ozone is to require those polluting the air in Pennsylvania to

participate in the NO_x Budget Trading Program. Consequently, NO_x Budget Units located in the states of Ohio, West Virginia, Virginia, Maryland, Delaware, New Jersey, New York, North Carolina and Washington, D.C. are included within the regulatory program established by the Department. Compliance by facility owners and operators with the remedy established by the EPA under section 126 of the Clean Air Act is an alternative to compliance to the Department's program. Facilities located in each of the states listed in the Department's draft final regulations are subject to emission limitations established by the EPA under section 126 of the Clean Air Act. Full implementation of an approved SIP to reduce interstate transport is also an alternative to compliance with the requirements of the Department's regulations. Because this provision of the draft final regulations raises a number of complicated legal and policy issues, the Department has prepared a more indepth evaluation of those issues in a document entitled "Interstate Pollution Transport Reductions Assuring All States Do Their Fair Share." A copy of that document is available from J. Wick Havens upon request.

The draft final regulations have been modified to be consistent with the emission limitations established by the EPA in response to Petitions submitted by Pennsylvania and three other states under section 126 of the Clean Air Act. This includes modifications to the applicability provisions of § 145.4, the state trading program budget established under § 145.40, the timing requirements in § 145.41, the NO_x allowance allocations in § 145.42 and the provisions related to the compliance supplement pool in § 145.43.

The Department has eliminated references to permitting requirements in the draft final regulations. The draft final regulations continue to describe the process that the Department will use to establish state NO_x budgets and allocate those budgets to individual facilities. The Depart-

ment will publish notice of the state budgets and NO_x allocations in the *Pennsylvania Bulletin* under §§ 145.40(d) and 145.42(i).

C. *Contact Persons*

For further information or to request a copy of the draft final regulations contact J. Wick Havens, Chief, Division of Air Resources Management, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-4310 or M. Dukes Pepper, Jr., Assistant Director, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464 (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). The draft final regulations are available electronically through the Department's website at <http://www.dep.state.pa.us>.

D. *Submitting Comments*

Written comments should be addressed to J. Wick Havens, Chief, Division of Air Resources Management, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468. Comments may also be transmitted electronically to Havens.Wick@dep.state.pa.us. If the sender does not receive an acknowledgment of electronic comments within 2 working days, the comment should be resubmitted to insure receipt. Comments must be received by February 22, 2000. A subject heading of the proposal and a return name and address must be included in each letter or transmission. Comments will not be excepted by facsimile or voice mail.

JAMES M. SEIF,
Secretary

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