

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 139]

Amusement Rides and Attractions Erected Permanently or Temporarily at Carnivals, Fairs and Amusement Parks; Advance Notice of Final Rulemaking

The Department of Agriculture (Department) provides this advance notice of final rulemaking regarding Amusement Rides and Attractions Erected Permanently or Temporarily at Carnivals, Fairs and Amusement Parks. Proposed rulemaking was published at 37 Pa.B. 2823 (June 23, 2007).

Statutory Authority

The Amusement Ride Inspection Act (act) (4 P.S. §§ 401—419) provides the legal authority for this final-form rulemaking.

Section 4 of the act (4 P.S. § 404) prescribes the powers and duties of the Department with respect to amusement rides and authorizes the Department to adopt regulations necessary to its administration of the provisions of the act.

Background

The Department afforded the public a 30-day comment period with respect to the proposed rulemaking. Comments were received from several amusement park operations, as well as from the Independent Regulatory Review Commission. Early in the process of drafting the proposed rulemaking, the Department recommended to the Amusement Ride Safety Advisory Board (Board), and that Board agreed, that prospective commentators should be afforded a second window within to offer comments on the final-form rulemaking. This notice provides that second opportunity to comment.

Summary of Changes from the Proposed Rulemaking

The Department made a number of changes to the final-form rulemaking in response to comments it received. Although interested persons are encouraged to view the draft final-form rulemaking for themselves, the following presents a general summary of some of the changes from the proposed rulemaking:

Section 139.2. Definitions. Clarifying language has been added to the proposed definitions of "operation," "professional engineer" and "qualified inspector."

Section 139.4. Registration. Language has been added to address situations where the required Department-issued registration plate cannot be readily attached to an amusement ride or amusement attraction so as to be plainly visible to the riding public.

Section 139.5. Insurance. Language has been added to address changes in insurance-related statutes and to simplify the required certificate that demonstrates adequate insurance coverage for an amusement ride or amusement attraction.

Section 139.9. Qualified inspectors. Language has been added to require the Department to report the results of a Qualified Inspector Test within 30 days of

the test, and to limit the Department's discretion with respect to continuing education of inspectors so that it would always entail at least 16 hours of continuing education during the period of certification.

Section 139.10. Advisory board. Although the Department originally proposed to delete this entire section, it will be retained and revised, to track with the provisions of the act addressing the composition and functions of this Board.

Section 139.11. Accident reporting. Language has been added to clarify that the 48-hour window within which an amusement ride or amusement attraction owner must report ride or attraction-related deaths, serious injuries or illnesses does not open until the owner acquires knowledge of the reportable incident.

Section 139.12. Variances. Although the Department originally proposed to delete this entire section, it will be retained and revised, to track with the provisions of the Act addressing variances.

Section 139.75. Fire protection and prevention. Language has been added to more clearly describe how fire extinguishers should be located with respect to gasoline-driven amusement rides and rides that might present fire hazards.

Section 139.76. Ride and attraction operators and attendants. Language has been added to clarify that the number of operators and attendants for an amusement ride or amusement attraction must meet or exceed the numbers recommended by the ride or attraction manufacturer or the ASTM International F-24 Committee Standards, whichever may be higher.

Obtaining or Viewing the Draft Final-Form Regulation

The draft final-form regulation can be viewed or downloaded from the Department's web site: www.agriculture.state.pa.us. Interested persons may also obtain a copy of the document by contacting John Dillabaugh, Director, Bureau of Ride and Measurement Standards, Pennsylvania Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 772-4189.

Comments

Interested persons are invited to submit comments on the draft final-form regulation. The comment period expires at 4 p.m. on Tuesday, May 6, 2008. Written comments must be delivered to the Department by that date and time. The comments should be delivered to John Dillabaugh, Director, Bureau of Ride and Measurement Standards, at the address set forth in the preceding paragraph.

DENNIS C WOLFF,
Secretary

[Pa.B. Doc. No. 08-728. Filed for public inspection April 18, 2008, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121 AND 129]

Control of NO_x Emissions from Glass Melting Furnaces

The Environmental Quality Board (Board) proposes to amend Chapters 121 and 129 (relating to general provisions; and standards for sources) as set forth in Annex A. This proposal will control nitrogen oxides (NO_x) emissions from glass melting furnaces.

This notice is given under Board order at its meeting of February 19, 2008.

A. *Effective Date*

These amendments will be effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

These amendments will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the Pennsylvania State Implementation Plan upon final-form rulemaking.

B. *Contact Persons*

For further information, contact Jane Mahinske, Air Quality Program Specialist, Division of Air Resource Management, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 783-8949 or Robert Reiley, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) web site (www.depweb.state.pa.us).

C. *Statutory Authority*

This action is being taken under the authority of section 5(a)(1) of the Air Pollution Control Act (35 P. S. § 4005(a)(1)), which grants to the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. *Background and Summary*

When ground-level ozone is present in concentrations in excess of the Federal health-based standards, public health is adversely affected. The EPA has concluded that there is an association between ambient ozone concentrations and increased hospital admissions for respiratory ailments, such as asthma. Further, although children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to ambient ozone while engaged in activity that involves physical exertion. Though these symptoms are often temporary, repeated exposure could result in permanent lung damage. The implementation of additional measures to address ozone air quality nonattainment in this Commonwealth is necessary to protect the public health.

The purpose of this proposed rulemaking is to reduce emissions of NO_x from glass melting furnaces to reduce levels of ground-level ozone. Ground-level ozone is not

directly emitted by pollution sources, but is created as a result of the chemical reaction of NO_x and volatile organic compounds in the presence of light and heat. The reduction of NO_x emissions will also help protect the public health from high levels of fine particulates, of which NO_x is a precursor component. Fine particulates, as well as ozone, are health hazards. The reduction of NO_x emissions also reduces visibility impairment and acid deposition. This proposed rulemaking is reasonably necessary to achieve and maintain the ozone and PM_{2.5} National Ambient Air Quality Standards.

The glass industry in this Commonwealth produces a variety of products, including flat glass, container glass, and pressed and blown glass. In 2002, flat glass production accounted for approximately 7,450 tons of NO_x emissions; container glass production accounted for approximately 1,800 tons of NO_x emissions; fiberglass production accounted for approximately 150 tons of NO_x emissions; and pressed and blown glass, including picture tube glass, accounted for approximately 2,500 tons of NO_x emissions. Total glass melting furnace NO_x emissions in 2002 were approximately 11,900 tons. Since 2002 a number of furnaces/facilities have discontinued operation or made process changes and total NO_x emissions during 2004 were approximately 9,230 tons. As a result, the glass industry in this Commonwealth remains the largest unregulated source for NO_x emissions in this Commonwealth.

The Commonwealth, along with the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont and Virginia, and the District of Columbia, are members of the Ozone Transport Commission (OTC), which was created under section 184 of the Federal Clean Air Act (42 U.S.C. § 7511c), to develop and implement regional solutions to the ground-level ozone problem in the Northeast and Mid-Atlantic regions. To date, States from the OTC, including the Commonwealth, have established a number of regulatory programs to reduce ozone precursor emissions, including programs related to portable fuel containers, architectural and industrial maintenance coatings and consumer products. Consistent with its strategy to achieve equitable ozone precursor emission reductions from all industrial sectors, the Commonwealth, along with other OTC States, has met with representatives of the glass industry to discuss reductions of NO_x emissions from glass melting furnaces. There is general agreement that the NO_x emission regulatory limits for the glass industry developed by the San Joaquin Valley Unified Air Quality Management District in California are appropriate NO_x emission limits for glass melting operations located in this Commonwealth and the other OTC States. The San Joaquin Valley regulation was first adopted in 1994 and subsequently amended in 1998, 2002 and 2006. Consequently, the San Joaquin Valley regulation was used as a model when developing this proposal, but was fashioned to be a Pennsylvania-specific regulation.

Although NO_x emission reduction technologies such as selective catalytic reduction and selective noncatalytic reduction can be adapted to control NO_x emissions from glass melting furnaces, this Commonwealth's glass industry prefers to avoid expenditure for controls and to defer significant emission reductions until the time of glass furnace rebuilds. Furnace rebuilds occur every 10 years or so when repair and maintenance costs for furnace refractory and other furnace components become excessive or maintenance is no longer feasible. Information available from the glass industry indicates that, for many

of the furnaces in this Commonwealth, these furnace rebuilds will not occur until after 2009, the 8-hour ozone attainment deadline for this Commonwealth's ozone nonattainment areas. Consequently, the proposed regulatory provisions would allow the glass industry a number of options for demonstrating compliance with NOx emission limitations. The compliance options include allowing the purchase of Clean Air Interstate Rule (CAIR) NOx Ozone Season allowances to account for emissions in excess of the proposed limits, as a near term compliance option.

The Department worked with the Air Quality Technical Advisory Committee (AQTAC) in the development of these proposed regulations. At its July 26, 2007, meeting, the AQTAC concurred with the Department's recommendation to advance the proposal to the Board for consideration as proposed rulemaking with publication for a minimum 60-day public comment period.

The Department also conferred with the Citizens Advisory Council (CAC) concerning the proposed rulemaking on July 17, 2007. The CAC concurred with the Department's recommendation to advance the proposal to the Board for consideration as proposed rulemaking. However, the CAC raised concerns over allowing system-wide averaging as a means of compliance demonstration and specifically seeks public comment on this issue.

As part of this proposed rulemaking, the Board under § 129.309 (relating to compliance demonstration) proposes that the owner or operator of a glass melting furnace may demonstrate compliance with the requirements of § 129.304 (relating to emission requirements) as follows—for the 2009 ozone season surrendering 0.25 CAIR NOx Ozone Season allowance for each ton of NOx emissions that exceeds the allowable emissions of the applicable glass melting furnaces; for the 2010 ozone season surrendering 0.50 CAIR NOx Ozone Season allowance for each ton of NOx emissions that exceeds the allowable emissions of the applicable glass melting furnaces; for the 2011 ozone season surrendering 0.75 CAIR NOx Ozone Season allowance for each ton of NOx emissions that exceeds the allowable emissions of the applicable glass melting furnaces; and for the 2012 ozone season and beyond surrendering one CAIR NOx Ozone Season allowance for each ton of NOx emissions that exceeds the allowable emissions of the applicable glass melting furnaces. However, specific comments are requested during the public participation process on the following alternative allowance surrender compliance demonstration: for the 2009 and 2010 ozone seasons, 0.25 CAIR NOx Ozone Season allowance for each ton of NOx emissions that exceeds the allowable emissions of the applicable glass melting furnaces would be surrendered; for the 2011 ozone season, 0.50 CAIR NOx Ozone Season allowance for each ton of NOx emissions that exceeds the allowable emissions of the applicable glass melting furnaces would be surrendered; and for the 2012 ozone season and beyond, one CAIR NOx Ozone Season allowance for each ton of NOx emissions that exceeds the allowable emissions of the applicable glass melting furnaces would be surrendered.

E. Summary of Regulatory Revisions

The proposed amendments add the following new definitions and terms to § 121.1 (relating to definitions) used in the substantive provisions under §§ 129.301—129.310 (relating to control of NOx emissions from glass melting furnaces): “100% air-fuel fired,” “air-fuel firing,” “blown glass,” “complete reconstruction,” “container glass,” “fiber-glass,” “flat glass,” “furnace battery,” “furnace rebuild,”

“glass melting furnace,” “idling,” “multiple furnaces,” “oxyfuel fired,” “oxygen-assisted combustion,” “permitted production capacity,” “pressed glass,” “primary furnace combustion system,” “pull rate,” “shutdown,” “start-up” and “vintage or vintage year.”

Proposed § 129.301 (relating to purpose) limits the emissions of NOx from glass melting furnaces.

Proposed § 129.302 (relating to applicability) specifies that beginning May 1, 2009, the regulation applies to an owner or operator of a glass melting furnace that emits or has the potential to emit NOx at a rate greater than 50 tons per year or 20 pounds per hour.

Proposed § 129.303 (relating to exemptions) provides, among other things, that the emission requirements in § 129.304 do not apply during periods of start-up or shutdown as defined in § 121.1, if the owner or operator complies with the requirements of §§ 129.305 and 129.306 (relating to start-up requirements; and shutdown requirements). Additionally, the owner or operator of a glass melting furnace granted an exemption under § 129.303 shall maintain operating records or documentation, or both, necessary to support the claim for the exemption.

Proposed § 129.304 provides that the owner or operator of a glass melting furnace shall determine allowable NOx emissions during the interval from May 1 through September 30, 2009, and each year thereafter, by multiplying the tons of glass pulled by each furnace by: 4.0 pounds of NOx per ton of glass pulled for container glass furnaces; 7.0 pounds of NOx per ton of glass pulled for pressed or blown glass furnaces; 4.0 pounds of NOx per ton of glass pulled for fiberglass furnaces; and 7.0 pounds of NOx per ton of glass pulled for flat glass furnaces.

Proposed § 129.305 provides that the owner or operator supply specific information requested by the Department to assure proper operation of the furnace. The owner or operator of a glass melting furnace may submit a request for a start-up exemption in conjunction with the plan approval application for the construction of a new furnace or furnace rebuild. The Department may approve start-up exemptions to the extent that the request identifies, among other things, the control technologies or strategies to be used. Additionally, the owner or operator shall place the emission control system in operation as soon as technologically feasible during start-up to minimize emissions.

Proposed § 129.306 provides, among other things, that the duration of a glass melting furnace shutdown, as measured from the time the furnace operations drop below 25% of the permitted production capacity or fuel use capacity to when all emissions from the furnace cease, may not exceed 20 days.

Proposed § 129.307 (relating to idling requirements) provides, among other things, that the owner or operator of a glass melting furnace shall operate the emission control system whenever technologically feasible during idling to minimize emissions.

Proposed § 129.308 (relating to compliance determination) provides, among other things, that by May 1, 2009, the owner or operator of a glass melting furnace subject to this section and §§ 129.301—129.307, 129.309 and 129.310 shall install, operate and maintain continuous emissions monitoring systems (CEMS), (as defined in § 121.1) for NOx and other monitoring systems to convert data to required reporting units in compliance with Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sources), and calculate

actual emissions using the CEMS data reported to the Department. However, the owner or operator of a glass melting furnace may elect to install and operate an alternate NO_x emissions monitoring system or method approved, in writing, by the Department.

Proposed § 129.309 (relating to compliance demonstration) requires that by October 31, 2009, and each year thereafter, the owner or operator of a glass melting furnace shall calculate and report to the Department the difference between the actual emissions from the glass melting furnace during the interval from May 1 through September 30 and the allowable emissions for that period. Compliance with § 129.304 shall be demonstrated by averaging the NO_x emissions during the interval from May 1 through September 30. Compliance can be demonstrated on a furnace-by-furnace basis; facility-wide emissions averaging basis; or a system-wide emissions averaging basis among glass melting furnaces under common control of the same owner or operator in this Commonwealth. The AQTAC requested that the Board solicit comments "on allowing averaging between owners/operators" of different glass melting furnace facilities in this Commonwealth.

The owner or operator of a glass melting furnace may demonstrate compliance with the requirements of § 129.304 for the period from May 1 through September 30, 2009, by surrendering to the Department 0.25 CAIR NO_x Ozone Season allowance for each ton of NO_x emissions by which the combined actual emissions exceed the allowable emissions of the glass melting furnaces subject to this section. For the period from May 1 through September 30, 2010, the owner or operator may demonstrate compliance by surrendering 0.50 CAIR NO_x Ozone Season allowance for each ton of NO_x emissions by which the combined actual emissions exceed the allowable emissions of the glass melting furnaces subject to this section. For the period from May 1 through September 30, 2011, the owner or operator may demonstrate compliance by surrendering 0.75 CAIR NO_x Ozone Season allowance for each ton of NO_x emissions by which the combined actual emissions exceed the allowable emissions of the glass melting furnaces subject to this section. Lastly, for the period from May 1 through September 30, 2012, and each ozone season thereafter, the owner or operator may demonstrate compliance by surrendering one CAIR NO_x Ozone Season allowance for each ton of NO_x emissions by which the combined actual emissions exceed the allowable emissions of the glass melting furnaces subject to this section.

Proposed § 129.310 (relating to recordkeeping) provides that the owner or operator of a glass melting furnace subject to the requirements of this section and §§ 129.301–129.309 shall maintain certain records to demonstrate compliance.

F. *Benefits, Costs and Compliance*

Benefits

Overall, the citizens of this Commonwealth will benefit from these proposed regulations because the regulations will result in improved air quality by reducing ozone precursor emissions and will encourage new technologies and practices, which will reduce emissions of NO_x.

Compliance Costs

The proposed rulemaking will impact approximately 16 glass melting facilities in this Commonwealth. There will be compliance costs related to the installation and operation of add-on control technology and NO_x emissions monitoring equipment such as CEMS, if an owner or

operator elects to install the controls and CEMS. However, the owners and operators of these facilities will be able to apply for an alternate monitoring system or method, which would significantly reduce their monitoring cost under this proposal.

The proposed rulemaking provides compliance alternatives including emissions averaging and use of CAIR NO_x Ozone Season allowances as near term compliance options. This regulatory flexibility will allow an owner or operator of an affected glass melting furnace to select the least-expensive compliance alternative, including emissions averaging or the use of CAIR NO_x Ozone Season allowances, to demonstrate compliance with the NO_x emission limits until the next scheduled furnace rebuild.

Compliance Assistance Plan

The Department plans to educate and assist the public and regulated community in understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing Regional Compliance Assistance Program.

Paperwork Requirements

The proposed regulations will not significantly increase the paperwork that is already generated during the normal course of business operations.

G. *Pollution Prevention*

The Federal Pollution Prevention Act of 1990 established a National policy that promotes pollution prevention as the preferred means for achieving State environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This proposed rulemaking will provide the owners and operators of all glass melting furnaces the opportunity to improve the energy efficiency at their operations, which will result in lower NO_x emissions.

H. *Sunset Review*

This proposed rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 7, 2008, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees (Committees). In addition to submitting the proposed rulemaking, the Department has provided the IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory

Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final-form publication of the regulations.

J. Public Comments

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed regulations to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by June 23, 2008. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by June 23, 2008. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by June 23, 2008. A subject heading of the proposal and a return name and address must be included in each transmission.

K. Public Hearings

The Board will hold three public hearings for the purpose of accepting comments on this proposal. The hearings will be held as follows:

- May 19, 2008 2 p.m. Department of Environmental Protection
Rachel Carson State Office Building
Room 105
400 Market Street
Harrisburg, PA 17105
- May 21, 2008 2 p.m. Department of Environmental Protection
Northeast Regional Office
Susquehanna Room—A, Second Floor
2 Public Square
Wilkes-Barre, PA 18711-1790
- May 23, 2008 2 p.m. Department of Environmental Protection
Southwest Regional Office
Waterfront A and B Conference Room
400 Waterfront Drive
Pittsburgh, PA 15222

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

KATHLEEN A. MCGINTY,
Chairperson

Fiscal Note: 7-420. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

100% Air-fuel fired—Operation of a glass melting furnace where the oxidant is exclusively ambient air.

* * * * *

Air-fuel firing—Operation of a glass melting furnace where greater than 50% of the oxidant for the fuel comes from ambient air.

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Blown glass—Glassware shaped by blowing air into a molten glass gather.

* * * * *

Complete reconstruction—For purposes of §§ 129.301—129.310 (relating to control of NOx emissions from glass melting furnaces), the replacement of components of an existing glass melting furnace to the extent that the fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new glass melting furnace.

* * * * *

Container glass—Glass manufactured by pressing, blowing in molds, drawing, rolling or casting which is used as a container.

* * * * *

Fiberglass—Material consisting of fine filaments of glass that are combined into yarn and woven or spun into fabrics, or that are used as reinforcement in other materials or in masses as thermal or as acoustical insulating products for the construction industry.

* * * * *

Flat glass—Glass produced by the float, sheet, rolled or plate glass process which is used in windows, windshields, tabletops or similar products.

* * * * *

Furnace battery—Two or more glass melting furnaces at a single facility that exhaust to a common stack.

Furnace rebuild—A complete reconstruction which is commenced after the end of a furnace campaign period or expected life cycle of a furnace. For the purpose of the compliance deadline in § 129.304 (relating to emission requirements), the effective date of a furnace rebuild is the date of the start of the furnace shutdown.

* * * * *

Glass melting furnace—A unit comprising a refractory vessel in which raw materials are charged, melted at high temperature, refined and conditioned to produce molten glass. The unit includes foundations, superstructure and retaining walls, raw material charger systems, heat exchangers, melter cooling system, exhaust system, refractory brick work, fuel supply and electrical boosting equipment, integral control systems and instrumentation and appendages for conditioning and distributing molten glass to forming apparatuses. As specified in 40 CFR 60.291 (relating to definitions), the forming apparatuses, including the float bath used in flat glass manufacturing and flow channels in wool fiberglass and textile fiberglass manufacturing, are not considered part of the glass melting furnace.

* * * * *

Idling—For purposes of §§ 129.301—129.310, the operation of a glass melting furnace at less than 25% of the permitted production capacity or fuel use capacity as stated in the plan approval or operating permit.

* * * * *

Multiple furnaces—Two or more glass melting furnaces at a single facility that do not exhaust to a common stack.

* * * * *

Oxyfuel fired—Operation of a glass melting furnace where greater than 50% of the oxidant for the fuel is provided from enriched oxygen streams.

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Oxygen-assisted combustion—Operation of a glass melting furnace where the oxygen content in the oxidant is greater than the oxygen content in ambient air or greater than 20.9% oxygen.

* * * * *

Permitted production capacity—The maximum pull rate as stated in the plan approval, operating permit or Title V permit.

* * * * *

Pressed glass—Glassware formed by placing a blob of molten glass in a metal mold, then pressing it with a metal plunger or “follower” to form the inside shape. The resultant piece, termed “mold-pressed,” has an interior form independent of the exterior, in contrast to mold-blown glass, whose interior corresponds to the outer form.

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Primary furnace combustion system—The burners in a glass melting furnace that are used during production of glass.

* * * * *

Pull rate—The amount of glass withdrawn from a glass melting furnace, expressed in short tons per day.

* * * * *

Shutdown—For purposes of § 129.303 (relating to exemptions), the period of time during which a glass melting furnace is purposely allowed to cool

from operating temperature and molten glass is removed from the tank for the purpose of a furnace rebuild.

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Start-up—For purposes of § 129.303, the period of time, after initial construction or a furnace rebuild, during which a glass melting furnace is heated to stable operating temperature by the primary furnace combustion system.

* * * * *

(Editor's Note: The following text is new and is printed in regular type to enhance readability.)

CONTROL OF NO_x EMISSIONS FROM GLASS MELTING FURNACES

§ 129.301. Purpose.

The purpose of this section and §§ 129.302—129.310 is to limit emissions of NO_x from glass melting furnaces.

§ 129.302. Applicability.

This section, § 129.301 (relating to purpose) and §§ 129.303—129.310 apply to an owner or operator of a glass melting furnace that emits or has the potential to emit NO_x at a rate greater than 50 tons per year or 20 pounds per hour. Beginning May 1, 2009, and for each year thereafter, an owner or operator of a glass melting furnace shall comply with this section, §§ 129.301 and 129.303—129.310.

§ 129.303. Exemptions.

(a) This section, §§ 129.301 and 129.302 (relating to purpose; and applicability) and 129.304—129.310 do not apply to glass melting furnaces where the heat is supplied solely by an electric current from electrodes submerged in the molten glass, except that heat may be supplied by other fuels for start-up when the furnace contains no molten glass.

(b) The emission requirements in § 129.304 (relating to emission requirements) do not apply during periods of start-up or shutdown as defined in § 121.1 (relating to definitions), if the owner or operator complies with the requirements of §§ 129.305 and 129.306 (relating to start-up requirements; and shutdown requirements).

(c) The owner or operator of a glass melting furnace claiming an exemption under subsection (b) shall notify the Department in writing at least 24 hours prior to initiating shutdown or start-up. The methods for submitting the written notice may include e-mail, hand or courier delivery, mail or facsimile transmissions to the appropriate regional office described in § 121.4 (relating to regional organization of the Department). The notification must include:

(1) The date and time of the start of the exempt operation.

(2) The reason for performing the operation and an estimated completion date.

(d) The owner or operator of a glass melting furnace granted an exemption under this section shall maintain operating records or documentation, or both, necessary to

support the claim for the exemption. The records shall be maintained for 5 years onsite and made available or submitted to the Department upon request.

(e) The owner or operator of a glass melting furnace shall notify the Department in writing within 24 hours after completion of the operation for which the exemption is claimed.

§ 129.304. Emission requirements.

(a) During the interval from May 1 through September 30, 2009, and each year thereafter, except as specified in §§ 129.303, 129.305 and 129.306 (relating to exemptions; start-up requirements; and shutdown requirements), the owner or operator of a glass melting furnace may not operate the glass melting furnace in a manner that results in NOx emissions in excess of the allowable limits specified in subsection (b).

(b) The owner or operator of a glass melting furnace shall determine allowable NOx emissions during the interval from May 1 through September 30, 2009, and each year thereafter, by multiplying the tons of glass pulled by each furnace by:

- (1) 4.0 pounds of NOx per ton of glass pulled for container glass furnaces.
- (2) 7.0 pounds of NOx per ton of glass pulled for pressed or blown glass furnaces.
- (3) 4.0 pounds of NOx per ton of glass pulled for fiberglass furnaces.
- (4) 7.0 pounds of NOx per ton of glass pulled for flat glass furnaces.

§ 129.305. Start-up requirements.

(a) The plan approval issued for the construction of a new glass melting furnace or furnace rebuild must include terms and conditions consistent with the requirements of § 127.12b (relating to plan approval terms and conditions). At least no later than 30 days prior to the anticipated date of start-up, the owner or operator of the glass melting furnace shall submit, in writing, to the Department, information requested by the Department to assure proper operation of the furnace. The information must include the following:

- (1) A detailed list of activities to be performed during start-up and an explanation for the length of time needed to complete each activity.
- (2) A description of the material process flow rates and system operating parameters and other information that the owner or operator plans to evaluate during the process optimization.

(b) The owner or operator of a glass melting furnace may submit a request for a start-up exemption in conjunction with the plan approval application for the construction of a new furnace or furnace rebuild. The actual length of the start-up exemption, if any, will be determined by the Department at the time of the issuance of the plan approval for the furnace rebuild.

(c) The length of the start-up exemption following activation of the primary furnace combustion system may not exceed:

- (1) One hundred and four days for a flat glass furnace.
- (2) Seventy days for a container glass, pressed or blown glass furnace.
- (3) Forty days for a fiberglass furnace.

(d) The Department may approve start-up exemptions to the extent that the submittal clearly:

- (1) Identifies the control technologies or strategies to be used.
- (2) Describes the physical conditions that prevail during start-up periods that prevent the controls from being effective.
- (3) Provides a reasonably precise estimate as to when physical conditions will have reached a state that allows for the effective control of emissions.

(e) During the start-up period, the owner or operator of a glass melting furnace shall maintain the stoichiometric ratio of the primary furnace combustion system so as not to exceed 5% excess oxygen, as calculated from the actual fuel and oxidant flow measurements for combustion in the glass melting furnace.

(f) The owner or operator shall place the emission control system in operation as soon as technologically feasible during start-up to minimize emissions.

§ 129.306. Shutdown requirements.

(a) The duration of a glass melting furnace shutdown, as measured from the time the furnace operations drop below 25% of the permitted production capacity or fuel use capacity to when all emissions from the furnace cease, may not exceed 20 days.

(b) The owner or operator of a glass melting furnace shall operate the emission control system whenever technologically feasible during shutdown to minimize emissions.

§ 129.307. Idling requirements.

(a) The owner or operator of a glass melting furnace shall operate the emission control system whenever technologically feasible during idling to minimize emissions.

(b) The NOx emissions during idling may not exceed the amount calculated using the following equation:

Pounds per day emission limit of NOx = (Applicable NOx emission limit specified in § 129.304 (relating to emission requirements) expressed in pounds per ton of glass produced) x (Furnace permitted production capacity in tons of glass produced per day)

§ 129.308. Compliance determination.

(a) By May 1, 2009, the owner or operator of a glass melting furnace subject to this section, §§ 129.301—129.307, 129.309 and 129.310 shall install, operate and maintain continuous emissions monitoring systems (CEMS, as defined in § 121.1 (relating to definitions)) for NOx and other monitoring systems to convert data to required reporting units in compliance with Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sources) and calculate actual emissions using the CEMS data reported to the Department. The owner or operator of a glass melting furnace may install and operate an alternate NOx emissions monitoring system or method, approved in writing, by the Department.

(b) Data invalidated under Chapter 139, Subchapter C, shall be substituted with data calculated using the potential emission rate for the furnace, or if approved, in writing, by the Department as follows:

- (1) The highest valid 1-hour emission value that occurred during the reporting quarter.
- (2) If no valid data were collected during the reporting quarter, the most recent quarter for which valid data

were collected shall be reported to the Department unless an alternative reporting period is approved in writing by the Department.

(c) The owner or operator of a glass furnace subject to this section shall submit to the Department quarterly reports of CEMS monitoring in pounds of NO_x emitted per hour, in a format approved by the Department and in compliance with Chapter 139, Subchapter C.

(d) The CEMS or approved monitoring system or method for NO_x installed under this section must meet the minimum data availability requirements in Chapter 139, Subchapter C.

(e) The owner or operator of a furnace battery may use a single CEMS to determine the total NO_x emissions from all the furnaces if the emission measurements are made at the common stack.

§ 129.309. Compliance demonstration.

(a) By October 31, 2009, and each year thereafter, the owner or operator of a glass melting furnace shall calculate and report to the Department the difference between the actual NO_x emissions from the glass melting furnace during the interval from May 1 through September 30 and the allowable NO_x emissions for that period. The calculations used to determine the difference in NO_x emissions, including the CEMS data and glass production data used to show compliance with the allowable NO_x emission limits specified in § 129.304 (relating to emission requirements), shall be included in the report submitted to the Department. The glass production data must consist of the quantity of glass, in tons, pulled per day for each furnace. Compliance with § 129.304 shall be demonstrated by averaging the NO_x emissions during the interval from May 1 through September 30.

(b) The owner or operator of a glass melting furnace, multiple glass melting furnaces or furnace battery shall demonstrate compliance with the requirements of § 129.304 using one of the following methods:

- (1) On a furnace-by-furnace basis.
- (2) Facility-wide emissions averaging.
- (3) System-wide emissions averaging among glass melting furnaces under common control of the same owner or operator in this Commonwealth.

(c) The owner or operator of a glass melting furnace, multiple glass melting furnaces or furnace battery may demonstrate compliance with the requirements of § 129.304 in accordance with the following:

(1) For the period from May 1 through September 30, 2009, the owner or operator of a glass melting furnace, multiple glass melting furnaces or furnace battery shall surrender to the Department 0.25 CAIR NO_x Ozone Season allowance, as defined in § 145.202 (relating to definitions), for each ton of NO_x by which the combined actual emissions exceed the allowable emissions of the glass melting furnaces subject to this section.

(2) For the period from May 1 through September 30, 2010, the owner or operator of a glass melting furnace, multiple glass melting furnaces or furnace battery shall surrender to the Department 0.50 CAIR NO_x Ozone Season allowance for each ton of NO_x by which the combined actual emissions exceed the allowable emissions of the glass melting furnaces subject to this section.

(3) For the period from May 1 through September 30, 2011, the owner or operator of a glass melting furnace, multiple glass melting furnaces or furnace battery shall surrender to the Department 0.75 CAIR NO_x Ozone

Season allowance for each ton of NO_x by which the combined actual emissions exceed the allowable emissions of the glass melting furnaces subject to this section.

(4) For the period from May 1 through September 30, 2012, and each ozone season thereafter, the owner or operator of a glass melting furnace, multiple glass melting furnaces or furnace battery shall surrender to the Department one CAIR NO_x Ozone Season allowance for each ton of NO_x by which the combined actual emissions exceed the allowable emissions of the glass melting furnaces subject to this section.

(5) The surrendered CAIR NO_x Ozone Season allowances shall be of current year vintage. For the purpose of determining the amount of allowances to be surrendered, a remaining fraction of a ton equal to or greater than 0.50 ton is deemed to equal 1 ton and a fraction of a ton less than 0.50 ton is deemed to equal 0 tons.

(6) By November 1, 2009, and by November 1 of each year thereafter, an owner or operator of a glass melting furnace, multiple glass melting furnaces or furnace battery subject to this section shall surrender the required CAIR NO_x Ozone Season allowances to the Department's designated NATS-NO_x allowance tracking system account as defined in § 121.1 (relating to definitions) and shall provide to the Department, in writing, the following:

- (i) The serial number of each NO_x allowance surrendered.
- (ii) The calculations used to determine the quantity of NO_x allowances required to be surrendered.

(7) If an owner or operator fails to comply with paragraph (6), the owner or operator shall by December 31 surrender three CAIR NO_x Ozone Season allowances of the current or later year vintage for each NO_x allowance that was required to be surrendered by November 1 of that year.

(d) The surrender of CAIR NO_x Ozone Season allowances under subsection (c)(7) does not affect the liability of the owner or operator of the unit for a fine, penalty or assessment, or an obligation to comply with another remedy for the same violation, under the Clean Air Act or the act.

(1) For purposes of determining the number of days of violation, if a facility has excess emissions for the period May 1 through September 30 which have not been reconciled with CAIR NO_x Ozone Season allowances, each day in that period (153 days) constitutes a day in violation unless the owner or operator of the unit demonstrates that a lesser number of days should be considered.

(2) Each ton of excess emissions is a separate violation.

(e) If the combined allowable emissions from glass melting furnaces at a facility from May 1 through September 30 exceed the combined actual emissions from glass melting furnaces at the facility subject to this section during the same period, the owner or operator may deduct the difference or a portion of the difference from the amount of actual emissions from glass melting furnaces at the owner or operator's other facilities located in this Commonwealth for that period.

§ 129.310. Recordkeeping.

(a) The owner or operator of a glass melting furnace subject to this section and §§ 129.301–129.309 shall maintain records to demonstrate compliance. The records must include an operating log maintained for each glass melting furnace that includes, on a monthly basis:

- (1) The total hours of operation.
 - (2) The type and quantity of fuel used.
 - (3) The quantity of glass pulled.
- (b) The owner or operator of a glass melting furnace shall maintain records of:
- (1) Source tests and operating parameters established during the initial source test.
 - (2) Maintenance, repairs, malfunctions, idling, start-up and shutdown.
- (c) The records required under this section shall be maintained onsite for 5 years. The records shall be made available or submitted to the Department upon request.

[Pa.B. Doc. No. 08-729. Filed for public inspection April 18, 2008, 9:00 a.m.]

[25 PA. CODE CHS. 121, 129 AND 145]

Control of NOx Emissions from Cement Kilns

The Environmental Quality Board (Board) proposes to amend Chapters 121, 129 and 145 (relating to definitions; standards for sources; and interstate pollution transport reduction) as set forth in Annex A.

This notice is given under Board order at its meeting of February 19, 2008.

A. *Effective Date*

This proposed rulemaking will be effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

This proposed rulemaking will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the Pennsylvania State Implementation Plan upon final-form rulemaking.

B. *Contact Persons*

For further information, contact Jane Mahinske, Air Quality Program Specialist, Division of Air Resource Management, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-9495 or Robert Reiley, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) web site (www.depweb.state.pa.us).

C. *Statutory Authority*

This action is being taken under the authority of section 5(a)(1) of the Air Pollution Control Act (35 P. S. § 4005(a)(1)), which grants to the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. *Background and Summary*

When ground-level ozone is present in concentrations in excess of the Federal health-based standards, public health is adversely affected. The EPA has concluded that there is an association between ambient ozone concentrations and increased hospital admissions for respiratory

ailments, such as asthma. Further, although children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to ambient ozone while engaged in activity that involves physical exertion. Though these symptoms are often temporary, repeated exposure could result in permanent lung damage. The implementation of additional measures to address ozone air quality nonattainment in this Commonwealth is necessary to protect the public health.

The purpose of this proposed rulemaking is to reduce emissions of nitrogen oxides (NOx) from cement kilns to reduce levels of ground-level ozone. Ground-level ozone is not directly emitted by pollution sources, but is created as a result of the chemical reaction of NOx and volatile organic compounds in the presence of light and heat. The reduction of NOx emissions will also help protect the public health from high levels of fine particulates, of which NOx is a precursor component. Fine particulates, as well as ozone, are health hazards. The reduction of NOx emissions also reduces visibility impairment and acid deposition. This proposed rulemaking is reasonably necessary to achieve and maintain the ozone and PM_{2.5} National Ambient Air Quality Standards.

The Commonwealth, along with the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont and Virginia, and the District of Columbia, are members of the Ozone Transport Commission (OTC), which was created under section 184 of the Federal Clean Air Act (42 U.S.C.A. § 7511c), to develop and implement regional solutions to the ground-level ozone problem in the Northeast and Mid-Atlantic regions. To date, states from the OTC, including the Commonwealth, have established a number of regulatory programs to reduce ozone precursor emissions, including programs related to portable fuel containers, architectural and industrial maintenance coatings and consumer products. Consistent with its strategy to achieve equitable ozone precursor emission reductions from all industrial sectors, the Commonwealth, along with other OTC states, has met with representatives of the cement industry to discuss reductions of NOx emissions from their kilns.

In the Commonwealth, there are 21 cement kilns, which in 2005 emitted 12,967 tons of NOx emissions in this Commonwealth. Of these 21 kilns in this Commonwealth, 14 of them are "long" kilns. These are older technology kilns and are less energy efficient than preheater kilns and the newest technology, precalciner kilns. The higher energy efficiency of the preheater and precalciner kilns results in inherently lower NOx emissions than those from long wet and dry kilns, per ton of product.

Control technologies are readily available to achieve NOx emission reductions of greater than 20% from cement kilns. These technologies include: conversion to indirect firing systems with low-NOx burners with approximately 20-30% reduction; mid-kiln firing of whole tires in long kilns with approximately 20-40% reduction; staged combustion in precalciner kilns with approximately 30-45% reduction; selective noncatalytic reduction (SNCR) in precalciner kilns with approximately 30-70% reduction; and selective catalytic reduction (SCR) with approximately 80-90% reduction. SNCR has been used on preheater kilns and has been proposed for long kiln applications. All of these technologies, except SCR, are demonstrated on kilns in the United States.

The proposed NOx emission limits should allow a number of this Commonwealth's cement manufacturers to develop and implement compliance strategies without the need for widespread installation of control equipment on long kilns which will likely be replaced with more energy efficient technologies over time. However, an additional compliance option includes allowing the purchase of Clean Air Interstate Rule (CAIR) NOx Ozone Season Allowances to account for emissions in excess of the proposed limits, as a near term compliance option.

The Department worked with the Air Quality Technical Advisory Committee (AQTAC) in the development of these proposed regulations. At its July 26, 2007, meeting, the AQTAC concurred with the Department's recommendation that the Board consider the adoption of these proposed regulations. However, the AQTAC would like to receive comment on the ability of owners and operators to demonstrate compliance on an intercompany emissions averaging basis. For instance, under the proposal, the owner or operator of a Portland cement kiln or multiple Portland cement kilns shall demonstrate compliance with the emission requirements specified in § 129.402 (relating to emission requirements) on a kiln-by-kiln basis, a facility-wide emissions averaging basis or a system-wide averaging basis among Portland cement kilns under the common control of the same owner or operator in this Commonwealth. The AQTAC recommends that the Board seek comment on whether averaging should be expanded to cement kilns that are not under the common control of the same owner or operator.

The Department also conferred with the Citizens Advisory Council (CAC) concerning the proposed rulemaking on July 17, 2007. The CAC concurred with the Department's recommendation that the Board consider the adoption of these proposed regulations. The CAC, however, raised concerns over allowing system-wide averaging as a means of compliance demonstration and specifically seeks public comment on this issue.

E. Summary of Regulatory Revisions

The proposed amendments add the following new definitions and terms to § 121.1 (relating to definitions) used in the substantive provisions under §§ 129.401—129.405 (relating to emissions of NOx from cement manufacturing): "calcine," "clinker," "long dry-process cement kiln," "long wet-process cement kiln," "Portland cement," "Portland cement kiln," "precalciner cement kiln" and "preheater cement kiln." In addition, the proposed amendments revise the following definition and term in § 121.1, "CEMS-Continuous emissions monitoring system."

Proposed § 129.401 (relating to applicability) provides that beginning May 1, 2009, an owner or operator of a Portland cement kiln shall comply with the requirements in this section and §§ 129.402—129.405.

Proposed § 129.402 (relating to emission requirements) requires that the owner or operator of a Portland cement kiln determine allowable emissions of NOx by multiplying the tons of clinker produced by the Portland cement kiln for the period from May 1 through September 30, 2009, and for each year thereafter by: 3.88 pounds of NOx per ton of clinker produced for long wet-process cement kilns; 3.44 pounds of NOx per ton of clinker produced for long dry-process cement kilns; and 2.36 pounds of NOx per ton of clinker produced for preheater cement kilns and for precalciner cement kilns.

Proposed § 129.403 (relating to compliance determination) requires, among other things, that not later than May 1, 2009, the owner or operator of a Portland cement

kiln shall install, operate and maintain continuous emissions monitoring systems (CEMS) for NOx emissions, and report CEMS emissions data to the Department in accordance with the CEMS requirements of Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sources).

Proposed § 129.404 (relating to compliance demonstration) provides, among other things, that by October 31, 2009, and of each year thereafter, the owner or operator of a Portland cement kiln shall report certain information to the Department, in a format reasonably prescribed by the Department. The owner or operator of a Portland cement kiln or multiple Portland cement kilns shall demonstrate compliance with the emission requirements specified in § 129.402 on a kiln-by-kiln basis, a facility-wide emissions averaging basis or a system-wide averaging basis among Portland cement kilns under the common control of the same owner or operator in this Commonwealth. Additionally, for the period from May 1 through September 30, 2009, and of each year thereafter, the owner or operator of a Portland cement kiln shall surrender to the Department one CAIR NOx Ozone Season allowance for each ton of NOx emissions by which the combined actual emissions exceed the allowable emissions of the Portland cement kiln subject to this section.

Proposed § 129.405 (relating to recordkeeping) provides that the owner or operator of a Portland cement kiln shall maintain an operating log for each Portland cement kiln that includes certain monthly information.

Under Chapter 145, Subchapter C (relating to emissions of NOx from cement manufacturing), it is proposed in § 145.141 (relating to applicability) that beginning May 1, 2009, an owner or operator of a Portland cement kiln would comply with §§ 129.401—129.405.

F. Benefits, Costs and Compliance

Benefits

Overall, the citizens of this Commonwealth will benefit from these proposed regulations because the regulations will result in improved air quality by reducing ozone precursor emissions and will encourage new technologies and practices, which will reduce emissions.

Compliance Costs

The proposed regulations will include emissions averaging and use of CAIR NOx Ozone Season allowances as near term compliance options. This will allow an owner or operator of an affected cement kiln to elect the least-cost compliance alternative, including emissions averaging or the use of CAIR NOx Ozone Season allowances to demonstrate compliance with the NOx emission limits. Based on 2005 ozone season emissions, implementation of the proposed rule is estimated to result in a reduction of 1,300 tons of NOx emissions. Based on a long-term average CAIR NOx Ozone Season allowance price of \$1,000, the cost of 1,300 NOx allowances would be \$1,300,000. The proposed rulemaking includes minor changes to existing administrative requirements. These changes are not expected to have a significant cost.

Compliance Assistance Plan

The Department plans to educate and assist the public and regulated community in understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing Regional Compliance Assistance Program.

Paperwork Requirements

The proposed rulemaking will not significantly increase the paperwork that is already generated during the normal course of business operations.

G. Pollution Prevention

The Federal Pollution Prevention Act of 1990 established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This proposed rulemaking will provide the owners and operators of all cement kilns the opportunity to improve the energy efficiency at their operations, which will result in lower NOx emissions.

H. Sunset Review

This proposed rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 7, 2008, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees (committees). In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed amendments within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. Public Comments

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed regulations to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by June 23, 2008. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by June 23, 2008. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulations will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@state.pa.us

and must also be received by the Board by June 23, 2008. A subject heading of the proposal and a return name and address must be included in each transmission.

K. Public Hearings

The Board will hold three public hearings for the purpose of accepting comments on this proposal. The hearings will be held as follows:

- May 19, 2008 10 a.m. Department of Environmental Protection
Rachel Carson State Office Building
Room 105
400 Market Street
Harrisburg, PA 17105
- May 21, 2008 10 a.m. Department of Environmental Protection
Northeast Regional Office
Susquehanna Room—A, Second Floor
2 Public Square
Wilkes-Barre, PA 18711-1790
- May 23, 2008 10 a.m. Department of Environmental Protection
Southwest Regional Office
Waterfront A and B Conference Room
400 Waterfront Drive
Pittsburgh, PA 15222

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

KATHLEEN A. MCGINTY,
Chairperson

Fiscal Note: 7-419. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

**Subpart C. PROTECTION OF NATURAL
RESOURCES**

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

CEMS—*Continuous emissions monitoring system*—**[For purposes of Chapter 127, Subchapter E, all of the equipment that may be required to meet the data acquisition and availability requirements of Chapter 127, Subchapter E to sample, condition,**

analyze and provide a record of emissions on a continuous basis.] All of the equipment required to meet applicable data acquisition and availability requirements in this article (relating to Air Resources) to sample, condition (if applicable), analyze, measure and provide a permanent record of emissions of air contaminants to the outdoor atmosphere, in accordance with the standards set forth by the Department under Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sources).

* * * * *

Calcine—To heat a substance to a high temperature, but below its melting or fusing point, to bring about thermal decomposition or a phase transition in its physical or chemical constitution.

* * * * *

Clinker—The product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

* * * * *

Long dry-process cement kiln—A Portland cement kiln that employs no preheating of the feed. The inlet feed to the kiln is dry.

Long wet-process cement kiln—A Portland cement kiln that employs no preheating of the feed. The inlet feed to the kiln is a slurry.

* * * * *

Portland cement—A hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition.

Portland cement kiln—A system, including solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

* * * * *

Preheater cement kiln—A Portland cement kiln where the feed to the kiln system is preheated in cyclone chambers and a second burner is used to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln that forms clinker.

Preheater cement kiln—A Portland cement kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that forms clinker.

* * * * *

(Editor's Note: Sections 129.401—129.405 are new and are printed in regular type to enhance readability.)

**CHAPTER 129. STANDARDS FOR SOURCES
EMISSIONS OF NO_x FROM CEMENT
MANUFACTURING**

§ 129.401. Applicability.

Beginning May 1, 2009, an owner or operator of a Portland cement kiln shall comply with the requirements in this section and §§ 129.402—129.405.

§ 129.402. Emission requirements.

(a) During the period from May 1 through September 30, 2009, and for each year thereafter, the owner or

operator of a Portland cement kiln may not operate a Portland cement kiln in a manner that results in NO_x emissions in excess of the allowable limits established under subsection (b).

(b) The owner or operator of a Portland cement kiln shall determine allowable emissions of NO_x by multiplying the tons of clinker produced by the Portland cement kiln for the period from May 1 through September 30, 2009, and for each year thereafter by:

- (1) 3.88 pounds of NO_x per ton of clinker produced for long wet-process cement kilns.
- (2) 3.44 pounds of NO_x per ton of clinker produced for long dry-process cement kilns.
- (3) 2.36 pounds of NO_x per ton of clinker produced for:
 - (i) Preheater cement kilns.
 - (ii) Preheater cement kilns.

§ 129.403. Compliance determination.

(a) By May 1, 2009, the owner or operator of a Portland cement kiln shall:

- (1) Install, operate and maintain CEMS for NO_x emissions.
- (2) Report CEMS emissions data, in accordance with the CEMS requirements of Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sourcing for stationary sources), to the Department.

(3) Calculate actual emissions using the CEMS data reported to the Department.

(b) Data invalidated under Chapter 139, Subchapter C, shall be substituted with either of the following:

- (1) Data calculated using the potential emission rate for the kiln.
- (2) If approved by the Department, in writing, the highest valid 1-hour emission value that occurred during the reporting quarter for an invalid data period during that quarter. If no valid data were collected during the reporting quarter, one of the following shall be reported to the Department:
 - (i) The highest valid 1-hour emission value that occurred during the most recent quarter for which valid data were collected.
 - (ii) If approved by the Department, in writing, the highest valid 1-hour emission value that occurred during an alternative reporting period.

(c) The owner or operator of a Portland cement kiln subject to this section shall submit to the Department quarterly reports of CEMS monitoring data in pounds of NO_x emitted per hour, in a format approved by the Department, in writing, and in compliance with Chapter 139, Subchapter C.

(d) The CEMS for NO_x installed under the requirements of this section must meet the minimum data availability requirements in Chapter 139, Subchapter C.

§ 129.404. Compliance demonstration.

(a) By October 31, 2009, and each year thereafter, the owner or operator of a Portland cement kiln shall report to the Department, in a format approved, in writing, by the Department:

- (1) The difference between the actual NO_x emissions from the kiln during the interval from May 1 through September 30 and the allowable emissions for that period.

(2) The calculations used to determine the difference in emissions, including the CEMS data and clinker production data used to show compliance with the allowable emission limits in § 129.402 (relating to emission requirements). The clinker production data must consist of the quantity of clinker, in tons, produced per day for each kiln.

(b) The owner or operator of a Portland cement kiln or multiple Portland cement kilns shall demonstrate compliance with the emission requirements in § 129.402 on either:

- (1) A kiln-by-kiln basis.
- (2) A facility-wide emissions averaging basis.

(3) A system-wide averaging basis among Portland cement kilns under the common control of the same owner or operator in this Commonwealth.

(c) The owner or operator of a Portland cement kiln may demonstrate compliance with the emission requirements of § 129.402 in accordance with the following:

(1) For the period from May 1 through September 30, 2009, and each year thereafter, the owner or operator of a Portland cement kiln shall surrender to the Department one CAIR NOx Ozone Season allowance, as defined in § 145.202 (relating to definitions), for each ton of NOx by which the combined actual emissions exceed the allowable emissions of the Portland cement kilns at a facility subject to this section.

(2) The surrendered CAIR NOx Ozone Season allowances shall be of current year vintage.

(3) For purposes of determining the amount of allowances to surrender, any remaining fraction of a ton equal to or greater than 0.50 ton is deemed to equal 1 ton and any fraction of a ton less than 0.50 ton is deemed to equal zero tons.

(d) If the combined allowable emissions from Portland cement kilns at a facility from May 1 through September 30 exceed the combined actual emissions from Portland cement kilns at the facility subject to this section and §§ 129.401—129.403 and 129.405 (relating to applicability; emission requirements; and compliance determination; and recordkeeping) during the same period, the owner or operator may deduct the difference or a portion of the difference from the amount of actual emissions from Portland cement kilns for that period at the owner or operator's other facilities located in this Commonwealth. The owner or operator of a kiln that commences operation after _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposal.*) may average only those emissions that are below the permitted NOx limit for the kiln or below 1.52 pounds of NOx per ton of clinker, whichever is lower.

(e) By November 1, 2009, and each year thereafter, an owner or operator of a Portland cement kiln subject to this section and §§ 129.401—129.403 and 129.405 shall surrender the required CAIR NOx Ozone Season allowances to the Department's designated NATS-NOx allowance tracking system account as defined in § 121.1 (relating to definitions) and shall provide to the Department, in writing, the following:

- (1) The serial number of each CAIR NOx Ozone Season allowance surrendered.
- (2) The calculations used to determine the quantity of CAIR NOx Ozone Season allowances required to be surrendered.

(f) If an owner or operator of a Portland cement kiln fails to comply with subsection (e), the owner or operator shall by December 31 surrender three CAIR NOx Ozone Season allowances of the current or later year vintage for each CAIR NOx Ozone Season allowance that was required to be surrendered by November 1 of that year.

(g) The surrender of CAIR NOx Ozone Season allowances under subsection (f) does not affect the liability of the owner or operator of the Portland cement kiln for any fine, penalty or assessment, or an obligation to comply with any other remedy for the same violation, under the CAA, or the act.

(1) For purposes of determining the number of days of violation, if a facility has excess emissions for the period May 1 through September 30, each day in that period (153 days) constitutes a day in violation unless the owner or operator of the Portland cement kiln demonstrates that a lesser number of days should be considered.

- (2) Each ton of excess emissions is a separate violation.

§ 129.405. Recordkeeping.

(a) The owner or operator of a Portland cement kiln shall maintain an operating log for each Portland cement kiln. The operating log must include the following on a monthly basis:

- (1) The total hours of operation.
- (2) The type and quantity of fuel used.
- (3) The quantity of clinker produced.

(b) The records maintained by the owner or operator of a Portland cement kiln must include the following:

(1) Source tests and operating parameters established during the initial source test and subsequent testing

(2) The date, time and duration of any start-up, shut-down or malfunction of a Portland cement kiln or emissions monitoring system.

(3) The date and type of maintenance, repairs or replacements performed on the kilns, control devices and emission monitoring systems.

(c) The owner or operator of a Portland cement kiln shall maintain the records required under this section onsite for 5 years. The records shall be made available to the Department upon request.

CHAPTER 145. INTERSTATE POLLUTION TRANSPORT REDUCTION

Subchapter C. EMISSIONS OF NOx FROM CEMENT MANUFACTURING

§ 145.141. Applicability.

Beginning May 1, 2005, **until April 30, 2009**, an owner or operator of a Portland cement kiln shall comply with this subchapter. **Beginning May 1, 2009, an owner or operator of a Portland cement kiln shall comply with §§ 129.401—129.405 (relating to emissions of NOx from cement manufacturing).**

[Pa.B. Doc. No. 08-730. Filed for public inspection April 18, 2008, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 54, 62 AND 76]

[L-00070186]

Universal Service and Energy Conservation Reporting Requirements and Customer Assistance Programs

The Pennsylvania Public Utility Commission extends the time period in which comments may be filed to the previous-captioned proposed rulemaking order to Friday, April 18, 2008. The proposed rulemaking order was published at 38 Pa.B. 776 (February 9, 2008) and provided for a 60 day comment period ending on Wednesday, April 9, 2008.

Be advised that interested persons may now submit written comments, an original and 15 copies, to Secretary,

Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265 by the close of business on Friday, April 18, 2008. Parties that have already provided comments at this docket may submit supplemental comments by April 18, 2008. To facilitate posting, filed comments shall be forwarded by means of e-mail to Michael Smith, michasmitstate.pa.us, Patricia Krise Burket, pburket@state.pa.us and Cyndi Page, cypage@state.pa.us.

The contact persons for this proposed rulemaking statement are Patricia Krise Burket, Law Bureau, (717) 787-3464 and Michael Smith, Bureau of Consumer Services, (717) 705-0620.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 08-731. Filed for public inspection April 18, 2008, 9:00 a.m.]