

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CH. 127 ]

#### Air Quality Permit Streamlining

The Environmental Quality Board (Board) amends Chapter 127 (relating to construction, modification, reactivation and operation of sources) to read as set forth in Annex A.

##### A. *Effective Date*

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

##### B. *Contact Persons*

For further information, contact Virendra Trivedi, Chief, New Source Review Section, Division of Permits, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 772-3979; 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.

##### C. *Statutory Authority*

This final-form rulemaking is promulgated under the authority in section 5(a)(1) of the Air Pollution Control Act (APCA) (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, and section 6.1(b.3) of the APCA (35 P. S. § 4006.1(b.3)), which requires the Board by regulation to establish adequate, streamlined and reasonable procedures for expeditiously determining when applications are complete and for expeditious review of applications.

##### D. *Background and Summary*

As part of an effort to streamline the air quality permitting process, the Department of Environmental Protection (Department) investigated ways to reduce the plan approval application time, reduce unnecessary costs to industry and continue to ensure that citizens receive adequate notice of potential plan approval/permitting actions to enable timely comment on issues of public concern. The Department wanted to employ faster response times for minor permitting actions for needed product improvements, which allows industry to be responsive to free market changes, while at the same time ensuring that those changes do not degrade existing air quality. In addition, the Department wanted to ensure that the permit streamlining effort benefited the Department, as well, by allowing it to focus scarce administrative resources on evaluating major source permit applications that have the potential to have more significant environmental impacts than minor sources. As part of this effort, the Board has approved final amendments to extend the authorization of a source to temporarily operate to facilitate shake-down, and to revise the public notice provisions which address receipt of applications for plan approval and intent to issue certain plan approvals. In addition, the Board has finalized provisions regarding completeness criteria for applications for plan approval. The Board believes that this final-form rulemaking will

continue to protect air quality, allow business to respond to market changes and allow for adequate public participation.

The final-form rulemaking contains several amendments to the Department's air quality regulations. The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) during the development of this final rulemaking. At its July 26, 2007, meeting, the AQTAC concurred with the Department's recommendation that the Board consider the final amendments on February 19, 2008. The Department also consulted with the Citizens Advisory Council during the development of the final-form rulemaking.

##### E. *Summary of the Final-Form Rulemaking*

The final-form rulemaking amends § 127.12b (relating to plan approval terms and conditions) to extend from 120 days to 180 days the duration for temporary "shake-down" operation of new air contamination sources and air cleaning devices subject to the plan approval requirements. This section was not modified between proposed and final-form rulemaking.

Section 127.12d (relating to completeness determination) sets forth the criteria the Department will use to determine if an application for plan approval is complete. This section was modified between proposed and final-form rulemaking to provide that the Department would make an administrative completeness determination within 30 days of receipt of the application. This section was also modified to require an applicant to provide supplemental information to the Department within 10-working days of receipt of a written request for supplemental information. The supplemental information must be provided within 10-working days of receipt of the Department's written request for additional information for the administrative completeness determination. The Department will return an application if an applicant fails to provide the requested information. Other minor clarifying changes were made as well.

Section 127.44 (relating to public notice) has been amended to, among other things, require the Department to publish in the *Pennsylvania Bulletin* a notice of receipt and intent to issue certain minor plan approvals. This section was modified between proposed and final-form rulemaking to provide that the Department will prepare a notice of receipt and intent to issue in accordance with § 127.45 (relating to contents of notice). The information elements to be included in the public notice were deleted from this section and moved to § 127.45. In addition other minor clarifying changes were made as well.

Section 127.45 was amended between proposed and final-form rulemaking to include the information elements in the public notice of receipt and intent to issue that were originally under § 127.44. In addition, other clarifying changes were made as well.

Section 127.48 (relating to conferences and hearings) is amended to require, in certain instances, that the Department publish notice of hearings or conferences in a newspaper of general circulation and the *Pennsylvania Bulletin*. This section was not modified between proposed and final-form rulemaking.

The final-form rulemaking will be submitted to the United States Environmental Protection Agency (EPA) as a revision to Pennsylvania's State Implementation Plan codified in 40 CFR 52.2020 (relating to identification of plan).

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

#### F. *Summary of Comments and Responses*

Twelve commentators submitted comments during the public comment period. In addition, the Independent Regulatory Review Commission (IRRC) and the Senate Environmental Resources and Energy Committee submitted comments during the extended comment periods authorized by the Regulatory Review Act (71 P. S. §§ 745.1—745.15). The following is a summary of the major comments that were received and responses.

Several commentators supported the Board's efforts to streamline the air quality permitting process. The Board agrees that the proposed changes will improve the overall permitting process by reducing both the plan approval application processing time and unnecessary costs to the applicants and the Department, while still providing timely notice to the public for comment on all complete plan approval applications submitted to the Department.

Several commentators supported the proposed change to § 127.12b that extends the temporary shakedown period for a facility for additional limited periods from 120 days to 180 days. The Board believes that extending the temporary shakedown period from 120 days to 180 days will allow companies adequate time to test newly permitted sources in accordance with the more complicated stack test requirements, rather than reapply for another extension for "shakedown" purposes.

Several commentators recommended that the Board adopt a deadline for issuance of the "completeness determination" under § 127.12d. The Board agrees and has revised § 127.12d(a) to provide that the Department will provide written notice of the completeness determination to the applicant "within 30 days of receipt of an application."

A commentator requested that the term "other documents" in § 127.12d(b) be expanded to be more specific. The Board agrees. Section 127.12d(b) of the final-form rulemaking has been revised to clarify that the minimum requirements for documentation to be submitted with a plan approval application include "other documents requested in the plan approval application."

Several commentators urged the Board to reject the proposed revisions because several aspects of the proposed rulemaking will severely curtail opportunities for effective citizen participation in air permitting decisions. The primary objective of the APCA is the protection of public health, safety and well-being of the citizens of this Commonwealth. See 35 P. S. § 4002(a)(i). The commentators submitted that this objective is furthered by continuing to provide citizens of this Commonwealth with information about all plan approvals, including all permit conditions, by publication in the *Pennsylvania Bulletin*. The commentators urged the Board to reject the Department's proposal in derogation of this fundamental objective of the APCA.

The Board disagrees with the commentators that public participation in the plan approval application process will be severely curtailed by the proposed changes to the plan approval requirements. Rather, the proposed changes to § 127.44 clarify the Department's current practice in

publishing notices of receipt for plan approval applications for sources for which there is little to no public interest or concern. As a result, all plan approval actions will have at least a 30-day public comment period. The amendatory provisions in the final-form regulation are consistent with section 6.1(b.3) of the APCA, which requires the Board to establish adequate, streamlined and reasonable procedures by regulation for expeditiously determining when applications are complete and for expeditious review of applications. See 35 P. S. § 4006.1(b.3). In addition, the changes to § 127.45 merely clarify the Department's general practice in publishing a brief description of the proposed action. Section 2 of the APCA provides, in part, that it is "... the policy of the Commonwealth of Pennsylvania to protect the air resources of this Commonwealth to the degree necessary for the (i) protection of public health, safety and well-being of the citizens of Pennsylvania . . ." See 35 P. S. § 4002(a)(i). The permit streamlining amendments set forth in the final-form rulemaking will not adversely impact the protection of public health and the environment nor curtail public involvement in the permitting process.

One commentator requested that the Board amend the regulations to allow for a reasonable time period for approval of trial burns of "opportunity fuels" of previously known characteristics. The Board disagrees. The Department is taking a number of steps to provide operational flexibilities for approval of trial burns of "opportunity fuels." Section 127.14 (relating to exemptions) provides an exemption from the permit requirements for approval of trial burns of "opportunity fuels." Exemptions can be determined from the existing list of sources or through the use of a request for determination.

A commentator noted that as amended, § 127.45(b)(5) would no longer require a "description of the reasons" for including conditions and was concerned with this change. The Board notes that while the requirements of existing § 127.45(5) could be interpreted as requiring that the entire plan approval conditions need to be published in the notice of action to be taken, to do so presents significant costs to the Department as well as the applicant. Consequently, new § 127.45(b)(5) has been clarified to require a brief description of the conditions being placed in the plan approval with reference to applicable State and Federal requirements. The entire plan approval will be available for review at the location specified in the notice and will also be provided upon request.

#### G. *Benefits, Costs and Compliance*

##### *Benefits*

Overall, the citizens of this Commonwealth will benefit from this final-form rulemaking because the Department's air quality program staff will be afforded additional time for evaluating major source permit applications that will likely have significant environmental impacts. In addition, the final-form rulemaking will allow industry to be responsive to free market changes while at the same time ensuring that those changes do not degrade existing air quality.

##### *Compliance Costs*

This final-form rulemaking will reduce compliance costs for industry by reducing the number of authorizations requested to extend the temporary operation period to facilitate the shakedown of sources and air cleaning devices. In addition, the cost of complying with the notice provisions will be reduced substantially because publication of the plan approval will no longer be required.

*Compliance Assistance*

The Department plans to educate and assist the public and regulated community with understanding the amendments to the plan approval requirements. This outreach effort will be accomplished through the Department's ongoing compliance assistance program.

*Paperwork Requirements*

The final-form rulemaking will not increase the paperwork that is already generated during the normal course of business.

*H. Pollution Prevention*

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) 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 final-form rulemaking will allow industry to be responsive to free market changes, while at the same time ensuring that those changes do not degrade existing air quality.

*I. Sunset Review*

The final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the intended goals.

*J. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 9, 2007, the Department submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 1317, to IRRC and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees (Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act, on April 16, 2008, this final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 17, 2008, and approved the final-form rulemaking.

*K. Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) At least a 60-day public comment period was provided as required by law, and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposal published at 37 Pa.B. 1317 (March 24, 2007).

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

*L. Order*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 127 are amended by amending §§ 127.12b, 127.44, 127.45 and 127.48; and by adding § 127.12d to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This final-form rulemaking will be submitted to the EPA as an amendment to the Pennsylvania State Implementation Plan.

(f) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

KATHLEEN A. MCGINTY,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 2132 (May 3, 2008).)*

**Fiscal Note:** Fiscal Note 7-408 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**

**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**ARTICLE III. AIR RESOURCES**

**CHAPTER 127. CONSTRUCTION, MODIFICATION, REACTIVATION AND OPERATION OF SOURCES**

**Subchapter B. PLAN APPROVAL REQUIREMENTS**

**§ 127.12b. Plan approval terms and conditions.**

(a) A plan approval may contain terms and conditions the Department deems necessary to assure the proper operation of the source including the requirement for a compliance demonstration prior to issuance of an operating permit.

(b) At a minimum, each plan approval must incorporate by reference the emission and performance standards and other requirements of the act, the Clean Air Act or the regulations adopted under the act or the Clean Air Act.

(c) The plan approval must incorporate the monitoring, recordkeeping and reporting provisions required by Chapter 139 (relating to sampling and testing) and other monitoring, recordkeeping or reporting requirements of

this article and additional requirements related to monitoring, recordkeeping and reporting required by the Clean Air Act and the regulations thereunder, including, if applicable, the enhanced monitoring requirements of 40 CFR Part 64 (relating to enhanced monitoring).

(d) The plan approval must authorize temporary operation to facilitate shakedown of sources and air cleaning devices, to permit operations pending issuance of a permit under Subchapter F (relating to operating permit requirements) or Subchapter G (relating to Title V operating permits) or to permit the evaluation of the air contamination aspects of the source. This temporary operation period will be valid for a limited time, not to exceed 180 days, but may be extended for additional limited periods, each not to exceed 180 days.

(e) Temporary operation will not be authorized or extended under this section which may circumvent the requirements of this chapter.

**§ 127.12d. Completeness determination.**

(a) The Department will determine if an application for plan approval is administratively complete and will provide written notice of the completeness determination to the applicant within 30 days of receipt of an application.

(b) For purposes of this section, an application is administratively complete if it contains the necessary information, maps, fees and other documents requested in the plan approval application, regardless of whether the information, maps and documents would be sufficient to justify issuance of the plan approval.

(c) If the Department determines that the application is not administratively complete, the Department will send the applicant a written statement of the specific information, maps, fees and documents that are required to make the application administratively complete. If the applicant does not provide the requested information to the Department within 10 working days of receipt of the request, the Department will return the application and fees to the applicant.

**§ 127.44. Public notice.**

(a) The Department will publish in the *Pennsylvania Bulletin* a notice of receipt and intent to issue for each plan approval application, except plan approval applications subject to the notice requirements of subsection (b). The Department will prepare a notice of receipt and intent to issue in accordance with § 127.45(a) (relating to contents of notice).

(b) The Department will prepare a notice, in accordance with § 127.45(b), of action to be taken on applications for plan approvals for the following:

(1) Sources subject to Subchapter D (relating to prevention of significant deterioration of air quality).

(2) Sources subject to Subchapter E (relating to new source review).

(3) Sources of VOCs that submit plan approval applications demonstrating compliance with Chapter 129 (relating to standards for sources) using § 129.51(a) (relating to general).

(4) Sources located within a Title V facility.

(5) Other sources for which the Department has determined there is substantial public interest or for which the Department invites public comment.

(c) The notice required by subsection (b)(1)—(4) will be completed and sent by the Department to the applicant, the EPA, any state within 50 miles of the facility and any state whose air quality may be affected and that is contiguous to this Commonwealth. The applicant shall, within 10 days of receipt of notice, publish the notice on at least 3 separate days in a prominent place and size in a newspaper of general circulation in the county in which the source is to be located; proof of the publication shall be filed with the Department within 1 week thereafter. A plan approval will not be issued by the Department in the event of failure by the applicant to submit the proof of publication.

(d) If the Department denies a plan approval, the requirements of subsection (c) do not apply. Written notice of a denial will be given to requestors and to the applicant in accordance with § 127.13c (relating to notice of basis for certain plan approval decisions).

(e) In each case, the Department will publish notices required in this section in the *Pennsylvania Bulletin*.

(f) The notice will state, at a minimum, the following:

(1) The location at which the application may be reviewed. This location must be in the region affected by the application.

(2) A 30-day comment period, from the date of publication, will exist for the submission of comments.

(3) Plan approvals issued to sources identified in subsection (b)(1)—(4) or plan approvals issued to sources with limitations on the potential to emit may become part of the SIP and will be submitted to the EPA for review and approval.

**§ 127.45. Contents of notice.**

(a) The notice of receipt and intent to issue for each plan approval required by § 127.44(a) (relating to public notice) must include the following:

(1) The name and address of the applicant.

(2) The location and name of the source or facility at which the construction, modification, reactivation or installation is proposed.

(3) A brief description of the proposed action, including a brief description of the:

(i) Air contamination source to be constructed, modified, reactivated or installed.

(ii) Air cleaning device or control technology required including best available technology.

(iii) Type of conditions being placed in the plan approval with reference to applicable State and Federal requirements.

(4) The type and quantity of air contaminants being emitted.

(5) The name and telephone number of a person to contact at the Department for additional information.

(6) A statement that a person may oppose the proposed plan approval by filing a written protest with the Department, at the appropriate regional office described in § 121.4 (relating to regional organization of the Department).

(b) The notice of proposed plan approval issuance required by § 127.44(b) must include the following:

- (1) The name and address of applicant.
- (2) The location and name of the source or facility at which construction, modification, reactivation or installation is proposed.
- (3) The type and quantity of air contaminants being emitted.
- (4) For sources subject to Subchapter D (relating to prevention of significant deterioration of air quality), the degree of increment consumption expected to result from the operation of the source or facility.
- (5) A brief description of the conditions being placed in the plan approval with reference to applicable State and Federal requirements.
- (6) A description of the procedures for reaching a final decision on the proposed plan approval action including:
  - (i) The ending date for the receipt of written comments or written protests.
  - (ii) Procedures for requesting a hearing and the nature of that hearing.
  - (iii) Other procedures by which the public may participate in the final decision.

(7) The name and telephone number of a person to contact at the Department for additional information.

(8) A statement that a person may oppose the proposed plan approval by filing a written protest with the Department, at the appropriate regional office described in § 121.4 (relating to regional organization of the Department).

**§ 127.48. Conferences and hearings.**

(a) Prior to any plan approval issuance, the Department may, in its discretion, hold a fact finding conference or hearing at which the petitioner, and any person who has properly filed a protest under § 127.46 (relating to filing protests) may appear and give testimony; provided, however, that in no event will the Department be required to hold such a conference or hearing.

(b) The applicant, the protestant, commentators and other participants will be notified of the date, time, place and purpose of a conference or hearing, in writing or by publication in a newspaper of general circulation in the county in which the source is to be located and the *Pennsylvania Bulletin*, except when the Department determines that notification by telephone will be sufficient.

[Pa.B. Doc. No. 08-972. Filed for public inspection May 23, 2008, 9:00 a.m.]