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

Authority

The provisions of this Chapter 127 issued under section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20); and section 5 of the Air Pollution Control Act (35 P.S. § 4005), unless otherwise noted.

Cross References

This chapter cited in 25 Pa. Code § 77.455 (relating to air pollution control plan); 25 Pa. Code § 77.575 (relating to air resources protection); 25 Pa. Code § 87.66 (relating to air pollution control plan); 25 Pa. Code § 87.137 (relating to air resources protection); 25 Pa. Code § 88.48 (relating to air pollution control plan); 25 Pa. Code § 88.114 (relating to air resources protection); 25 Pa. Code § 88.205 (relating to air resources protection); 25 Pa. Code § 88.317 (relating to air resources protection); 25 Pa. Code § 88.492 (relating to minimum requirements for reclamation and operation plan); 25 Pa. Code § 89.13 (relating to air pollution control plan); 25 Pa. Code § 89.64 (relating to air resources protection); 25 Pa. Code § 90.44 (relating to air pollution control plan); 25 Pa. Code § 90.149 (relating to air resources protection); 25 Pa. Code § 121.1 (relating to definitions); 25 Pa. Code § 123.112 (relating to source operating permit provision requirements); 25 Pa. Code § 123.118 (relating to emission reduction credit provisions); 25 Pa. Code § 123.205 (relating to emission standards for coal-fired EGUs); 25 Pa. Code § 129.14 (relating to open burning operations); 25 Pa. Code § 129.15 (relating to coke pushing operations); 25 Pa. Code § 129.51 (relating to general); 25 Pa. Code § 129.52 (relating to surface coating processes); 25 Pa. Code § 129.52d (relating to control of VOC emissions from miscellaneous metal parts surface coating processes, miscellaneous plastic parts surface coating processes and pleasure craft surface coatings); 25 Pa. Code § 129.52e (relating to control of VOC emissions from automobile and light-duty truck assembly coating operations and heavier vehicle coating operations); 25 Pa. Code § 129.61a (relating to vapor leak monitoring procedures and other requirements for small gasoline storage tank emission control); 25 Pa. Code § 129.63a (relating to control of VOC emissions from industrial cleaning solvents); 25 Pa. Code § 129.67a (relating to control of VOC emissions from flexible packaging printing presses); 25 Pa. Code § 129.67b (relating to control of VOC emissions from offset lithographic printing presses and letterpress printing presses); 25 Pa. Code § 129.74 (relating to control of VOC emissions from fiberglass boat manufacturing materials); 25 Pa. Code § 129.82 (relating to control of VOCs from gasoline dispensing facilities (Stage II)); 25 Pa. Code § 129.82a (relating to requirements to decommission a Stage II vapor recovery system); 25 Pa. Code § 139.101 (relating to general requirements); 25 Pa. Code § 145.74 (relating to recordkeeping and reporting); 25 Pa. Code § 145.90 (relating to emission reduction credit provisions); 25 Pa. Code § 273.217 (relating to air resources protection); 25 Pa. Code § 145.302 (relating to definitions); 25 Pa. Code § 145.306 (relating to standard requirements); 25 Pa. Code § 145.321 (relating to general requirements for a permit incorporating CO_2 Budget Trading Program requirements); 25 Pa. Code § 145.322 (relating to submission of an application for a new, renewed or modified permit incorporating CO_2 Budget Trading Program requirements); 25 Pa. Code § 277.217 (relating to air resources protection); 25 Pa. Code § 288.217 (relating to air resources protection); and 25 Pa. Code § 298.61 (relating to restrictions on burning).

Subchapter A. GENERAL

Sec.
127.1. Purpose.
127.2. [Reserved].
127.3. Operational flexibility.

Cross References

This subchapter cited in 25 Pa. Code § 123.45 (relating to alternative opacity limitations); 25 Pa. Code § 128.1 (relating to procedure for submission of alternative emission reduction plans); and 25 Pa. Code § 128.2 (relating to adoption of alternative emission reduction option standards).

§ 127.1. Purpose.

The purpose of this article is to regulate air contamination sources for the public welfare. Air quality shall be maintained at existing levels in areas where the existing ambient air quality is better than the applicable ambient air quality standards, and air quality shall be improved to achieve the applicable ambient air quality standards in areas where the existing air quality is worse than the applicable ambient air quality standards. In accordance with this purpose, this chapter is designed to insure that new sources conform to the applicable standards of this article and that they do not result in producing ambient air contaminant concentrations in excess of those specified in Chapter 131 (relating to ambient air quality standards). New sources shall control the emission of air pollutants to the maximum extent, consistent with the best available technology as determined by the Department as of the date of issuance of the plan approval for the new source.

Source

The provisions of this § 127.1 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 3, 1972, effective March 20, 1972, 2 Pa.B. 383; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial page (185996).

§ 127.2. [Reserved].

Source

The provisions of this § 127.2 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; corrected October 26, 1979, effective May 12, 1979, 9 Pa.B. 3563; reserved October 26, 1979, effective May 12, 1979, 9 Pa.B. 3563. Immediately preceding text appears at serial page (42535).

§ 127.3. Operational flexibility.

(a) The following regulations implement section 502(b)(10) of the Clean Air Act (42 U.S.C.A. § 7661a(b)(10)) and section 6.1(i) of the act (35 P.S. § 4006.1(1)) related to operational flexibility:

(1) Section 127.448 (relating to emissions trading at facilities with Federally enforceable emissions caps) authorizes emissions trading within a facility when there is a Federally enforceable emissions cap on emissions of air contaminants.

(2) Section 127.449 (relating to de minimis emission increases) authorizes de minimis emissions increases without a permit amendment and continues the Department's existing program for exempting sources of minor significance contained in § 127.14 (relating to exemptions).

(b) The following regulations contain additional provisions that provide operational flexibility:

(1) Section 127.14 authorizes minor changes involving construction, modification, reactivation and installation to be made without requiring plan approval.

(2) Section 127.447 (relating to alternate operating scenarios) authorizes permittees to describe alternate operating scenarios in their permit application and allows the Department to issue operating permits incorporating several alternate operating scenarios.

(3) Section 127.462 (relating to minor operating permit modifications) provides for an expedited process for making minor operating permit modifications.

(4) Section 127.450 (relating to administrative operating permit amendments) allows the administrative amendment procedures to be used for Title V operating permit amendments which have received State plan approval.

(5) Subchapter H (relating to general plan approvals and operating permits) allows the use of general plan approvals and general operating permits for stationary and portable sources.

Source

The provisions of this § 127.3 adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899.

Subchapter B. PLAN APPROVAL REQUIREMENTS

Sec.

Cross References

This subchapter cited in 25 Pa. Code § 127.450 (relating to administrative operating permit amendments); and 25 Pa. Code § 127.702 (relating to plan approval fee).

§ 127.11. Plan approval requirements.

Except as provided in §§ 127.11a and 127.215 (relating to reactivation of sources; and reactivation), a person may not cause or permit the construction or modification of an air contamination source, the reactivation of an air contamination source after the source has been out of operation or production for 1 year or more, or the installation of an air cleaning device on an air contamination source, unless the construction, modification, reactivation or installation has been approved by the Department.

Source

The provisions of this § 127.11 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 3, 1972, effective March 20, 1972, 2 Pa.B. 383; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial page (185997).

Notes of Decisions

General Comments

Department of Environmental Resources' appeal to Commonwealth Court after the granting of a demurrer in County Court was barred by the concept of double jeopardy. *Department of Environmental Resources v. Monarch Pallet Corp.*, 532 A.2d 1246 (Pa. Cmwlth. 1987).

Cross References

This section cited in 25 Pa. Code § 127.25 (relating to compliance requirement); 25 Pa. Code § 127.443 (relating to operating permit requirements); and 25 Pa. Code § 129.92 (relating to RACT proposal requirements).

§ 127.11a. Reactivation of sources.

(a) Except as provided by § 127.215 (relating to reactivation), a source which has been out of operation or production for at least 1 year but less than or equal to 5 years may be reactivated and will not be considered a new source if the following conditions are satisfied:

(1) The owner or operator shall, within 1 year of the deactivation submit to the Department and implement a maintenance plan which includes the measures to be taken, including maintenance, upkeep, repair or rehabilitation pro-

cedures, which will enable the source to be reactivated in accordance with the terms of the permit issued to the source.

(2) The owner or operator shall submit a reactivation plan to the Department for approval at least 60 days prior to the proposed date of reactivation. The reactivation plan shall include sufficient measures to ensure that the source will be reactivated in compliance with the permit requirements. The permittee may submit a reactivation plan to the Department at any time during the term of its operating permit. The reactivation plan may also be submitted to and reviewed by the Department as part of the plan approval or permit application or renewal process.

(3) The owner or operator of the source shall submit a notice to the Department within 1 year of deactivation requesting preservation of emissions in the inventory and indicating the intent to reactivate the source.

(4) The owner or operator of the source shall comply with the terms and conditions of the maintenance plan while the source is deactivated, and shall comply with the terms of the reactivation plan and operating permit upon reactivation.

(5) The owner or operator of the source with an approved reactivation plan and operating permit shall notify the Department in writing at least 30 days prior to reactivation of the source.

(b) A source which has been out of operation or production for more than 5 years but less than 10 years may be reactivated and will not be considered a new source if the following conditions are satisfied:

(1) The owner or operator of the source complies with the requirements of subsection (a).

(2) The owner or operator of the source obtains a plan approval and operating permit which requires that the emission of air contaminants from the source will be controlled to the maximum extent, consistent with the best available technology as determined by the Department as of the date of reactivation.

(c) A source which has been out of operation for 10 or more years shall meet the requirements of this chapter applicable to a new source.

(d) Other provisions of this section to the contrary notwithstanding, a source that is out of production or operation on November 26, 1994, shall have 1 year to demonstrate compliance with the requirements of subsection (a)(1), (3) and (4).

(e) A source located in a nonattainment area that would emit an air contaminant related to the nonattainment designation or a source that would emit NO_x or VOC emissions may not be reactivated unless the proposed emissions are included in the SIP emission inventory or until the proposed emissions of these contaminants from the source are submitted to and approved by the EPA as an amendment of the SIP. The Department may refuse to allow reactivation of such a source for cause.

(f) The source shall have an operating permit prior to reactivation.

Source

The provisions of this § 127.11a adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899.

Cross References

This section cited in 25 Pa. Code § 127.11 (relating to plan approval requirements); 25 Pa. Code § 127.13 (relating to extensions); and 25 Pa. Code § 127.207 (relating to creditable emissions decreased or ERC generation and creation).

§ 127.12. Content of applications.

(a) An application for approval shall:

(1) Identify the location of the source and the name, title, address and telephone number of the individual responsible for the operation of the source.

(2) Contain information that is requested by the Department and is necessary to perform a thorough evaluation of the air contamination aspects of the source.

(3) Show that the source will be equipped with reasonable and adequate facilities to monitor and record the emissions of air contaminants and operating conditions which may affect the emissions of air contaminants and that the records are being and will continue to be maintained and that the records will be submitted to the Department at specified intervals or upon request.

(4) Show that the source will comply with applicable requirements of this article and requirements promulgated by the Administrator of the EPA under the Clean Air Act (42 U.S.C.A. §§ 7401—7706).

(5) Show that the emissions from a new source will be the minimum attainable through the use of the best available technology.

(6) Show that the source will not prevent or adversely affect the attainment or maintenance of ambient air quality standards when requested by the Department.

(7) Contain a plan of action for the reduction of emissions during each level specified in Chapter 137 (relating to air pollution episodes), when required by the Department.

(8) Show that the provisions of § 127.43a (relating to municipal notification) have been met. The applicant shall submit a copy of the notification letter and proof that the notice was received.

(9) Contain a plan for dealing with air pollution emergencies, when requested by the Department, or when required by the Clean Air Act.

(10) Show that the source and the air cleaning devices are capable of being and will be operated and maintained in accordance with good air pollution control practices.

(11) Contain a completed compliance review form or reference the most recently submitted compliance review form for facilities submitting a compliance review form on a periodic basis.

(b) The Department will not approve an application which fails to meet the requirements of subsection (a). An approval may be granted with appropriate conditions.

(c) The records, reports or information obtained by the Department or referred to at public hearings shall be available to the public, except as provided in subsection (d).

(d) Upon cause shown by any person that the records, reports or information, or a particular portion thereof, but not emission data, to which the Department has access under the act, if made public, would divulge production or sales figures or methods, processes or production unique to that person or would otherwise tend to affect adversely the competitive position of that person by revealing trade secrets, including intellectual property rights, the Department will consider the record, report or information, or particular portion thereof confidential in the administration of the act. The Department will implement this section consistent with sections 112(d) and 114(c) of the Clean Air Act (42 U.S.C.A. §§ 7412(d) and 7414(c)). Nothing in this section prevents disclosure of the report, record or information to Federal, State or local representatives as necessary for purposes of administration of Federal, State or local air pollution control laws, or when relevant in a proceeding under the act.

Source

The provisions of this § 127.12 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 3, 1972, effective March 20, 1972, 2 Pa.B. 383; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial pages (185997) to (185998).

Notes of Decisions

Double Jeopardy

Department of Environmental Resources' appeal to Commonwealth Court after the granting of a demurrer in county court was barred by the concept of double jeopardy. *Department of Environmental Resources v. Monarch Pallet Corp.*, 532 A.2d 1246 (Pa. Cmwlth. 1987).

Cross References

This section cited in 25 Pa. Code § 129.15 (relating to coke pushing operations); 25 Pa. Code § 139.51 (relating to purpose); and 25 Pa. Code § 283.218 (relating to air resources protection).

§ 127.12a. Compliance review.

(a) This section describes the compliance review procedures applicable during the review of an application for a plan approval including a general plan approval.

(b) Each applicant for a plan approval shall, as part of the application or on a periodic basis as authorized under subsection (j), submit the compliance review on a form provided by the Department, signed by a corporate officer or other responsible official of the facility submitting the application and containing a

verification that the information contained in the application is true and correct to the best of the signatory's belief formed after reasonable inquiry.

(c) The compliance review form shall provide information related to the compliance status of the applicant and related parties, including:

(1) The name, address, telephone number, taxpayer identification number and plan approval or application number.

(2) The form of management under which the applicant conducts its business and a brief description of the types of business activities performed.

(3) The name and location, including both the address and the municipality and county, telephone number and relationship to the applicant—parent, subsidiary or general partner—of the related parties in this Commonwealth.

(4) The name and business address of the plant manager and general partners of the applicant.

(5) A list of plan approvals and operating permits issued by the Department or the Allegheny County or Philadelphia County air pollution control agencies to the applicant or related parties that are in effect at the time of application or were in effect during the previous 5 years. The list shall include each plan approval and operating permit number, locations and expiration dates.

(6) A list of documented conduct and deviations by the applicant or related parties. The list shall include the date, location, plan approval or operating permit number, the nature of the documented conduct or deviation and the incident status—litigation, existing/continuing, corrected and date of correction. Unless otherwise specifically directed by the Department, the applicant is not required to report deviations which have been previously reported to the Department in writing under the requirements of this article related to monitoring and reporting requirements.

(d) The applicant shall update the compliance review form if the documented conduct or deviations occur from the date of the submission of the application through the date of operating permit issuance.

(e) The Department may establish a supplemental compliance review form that may be used to update information submitted on the compliance review form.

(f) If the Department finds that the applicant or a related party has an existing or continuing violation or lacks the intention or ability to comply with the act, or the regulations under the act, or a plan approval operating permit or order of the Department, as indicated by past or present violations, the Department will attempt to resolve the violations or lack of intention or ability to comply informally.

(g) If the Department is unable to resolve the violation or lack of intention or ability to comply on an informal basis, the Department will place the violation and may place the lack of intention or ability to comply on the compliance docket. The violation or lack of intention or ability to comply shall remain on the compliance docket until it is resolved to the satisfaction of the Department.

(h) Plan approval will not be issued to an applicant or related party if a violation or lack of intention or ability to comply at a source owned or operated by the applicant or a related party appears on the compliance docket.

(i) A permittee or applicant may appeal to the EHB a violation or lack of intention or ability to comply which the Department places on the compliance docket.

(j) Other provisions of this section notwithstanding, a facility may submit the compliance review form required by this section on a periodic basis of not less than once every 6 months. The owners and operators of the facility shall make an election to submit the compliance review information on a periodic basis or as part of the plan approval application with the submission of the first operating permit application filed after November 26, 1994, or by making an election in writing by May 26, 1995. The facility may only change the election with the approval of the Department in writing or upon renewal of the first filed permit or a Title V permit.

(k) The owners and operators of the facility shall have reasonable procedures in place to insure that documented conduct and deviations are identified and made part of the compliance review information submitted to the Department.

Source

The provisions of this § 127.12a adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899.

Cross References

This section cited in 25 Pa. Code § 127.32 (relating to transfer of plan approvals).

§ 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.

Authority

The provisions of this § 127.12b amended under sections 5 and 6 of the Air Pollution Control Act (35 P. S. §§ 4005(a)(1) and 4006.1(b.3)).

Source

The provisions of this § 127.12b adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899; amended May 23, 2008, effective May 24, 2008, 38 Pa.B. 2365. Immediately preceding text appears at serial pages (327807) to (327808).

§ 127.12c. Plan approval reporting requirements.

Each source shall submit reports to the Department containing the information the Department may prescribe relative to the operation and maintenance of the source.

Source

The provisions of this § 127.12c adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899.

Cross References

This section cited in 25 Pa. Code § 127.44 (relating to public notice).

§ 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.

Authority

The provisions of this § 127.12d issued under sections 5 and 6 of the Air Pollution Control Act (35 P. S. §§ 4005(a)(1) and 4006.1(b.3)).

Source

The provisions of this § 127.12d adopted May 23, 2008, effective May 24, 2008, 38 Pa.B. 2365.

§ 127.13. Extensions.

(a) Approval granted by the Department will be valid for a limited time, as specified by the Department in the approval. Except as provided in §§ 127.11a and 127.215 (relating to reactivation of sources; and reactivation), at the end of the time, if the construction, modification, reactivation or installation has not been completed, a new plan approval application or an extension of the previous approval will be required.

(b) If the construction, modification or installation is not commenced within 18 months of the issuance of the plan approval or if there is more than an 18-month lapse in construction, modification, or installation, a new plan approval application that meets the requirements of this subchapter and Subchapters D and E (relating to prevention of significant deterioration of air quality; and new source review) shall be submitted. The Department may extend the 18-month period upon a satisfactory showing that an extension is justified.

Source

The provisions of this § 127.13 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 3, 1972, effective March 20, 1972, 2 Pa.B. 383; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899; amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2365. Immediately preceding text appears at serial page (313710).

§ 127.13a. Plan approval changes for cause.

A plan approval may be terminated, modified, suspended or revoked and reissued if one or more of the following applies:

(1) The permittee constructs or operates the source subject to the plan approval in violation of the act, the Clean Air Act, the regulations promulgated under the act or the Clean Air Act, a plan approval or permit or in a manner that causes air pollution.

(2) The permittee fails to properly or adequately maintain or repair an air pollution control device or equipment attached to or otherwise made a part of the source.

(3) The permittee fails to submit a report required by the plan approval.

(4) The EPA determines that the plan approval is not in compliance with the Clean Air Act or the regulations thereunder.

Source

The provisions of this § 127.13a adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899.

§ 127.13b. Denial of plan approval application.

(a) The Department will deny a plan approval for a source if one or more of the following applies:

(1) The Department has determined that the source is likely to cause air pollution or to violate the act, the Clean Air Act or the regulations promulgated under the act or the Clean Air Act applicable to the source.

(2) In the design of the source, provision has not been made for adequate demonstration and verification of compliance, including source testing or alternative means to demonstrate and verify compliance.

(3) The EPA has notified the Department in writing that the plan approval is not in compliance with the Clean Air Act or the regulations thereunder.

(4) The applicant or a related party has a violation or lack of intention or ability to comply that appears on the compliance docket.

(b) The applicant may not construct, install, modify or operate an air contamination source or install air pollution control equipment or devices on the source contrary to the plans and specifications approved by the Department.

Source

The provisions of this § 127.13b adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899.

§ 127.13c. Notice of basis for certain plan approval decisions.

(a) When the Department denies a plan approval application or terminates, modifies, suspends or revokes a plan approval already issued, the action shall be in the form of a written notice to the person affected informing the person of the action taken by the Department and setting forth in the notice a full and complete statement of the reasons for the action.

(b) The notice required by subsection (a) will be served upon the person affected either by hand delivery or by certified mail return receipt requested.

(c) The Department will publish a notice and brief description of the action in the *Pennsylvania Bulletin*.

(d) The action in the notice shall be final and not subject to review unless, within 30 days of the service of the notice, a person affected thereby appeals to the EHB setting forth the grounds relied upon.

Source

The provisions of this § 127.13c adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899.

Cross References

This section cited in 25 Pa. Code § 127.44 (relating to public notice).

§ 127.14. Exemptions.

(a) Plan approval is not required for the construction, modification, reactivation or installation of the following:

(1) Air conditioning or ventilation systems not designed to remove pollutants generated by or released from other sources.

(2) Combustion units rated at 2.5 million or less Btus per hour of heat input.

(3) Combustion units with a rated capacity of less than 10 million Btu per hour of heat input fueled by natural gas supplied by a public utility, liquified petroleum gas or by commercial fuel oils which are No. 2 or lighter—viscosity less than or equal to 5.82 C St—and which meet the sulfur content require-

ments of § 123.22 (relating to combustion units). Combustion units converting to fuel oils which are No. 3 or heavier—viscosity greater than 5.82 C St—or contain sulfur in excess of the requirements of § 123.22 require approval. For the purpose of this section, commercial fuel oil shall be virgin oil which has no reprocessed, recycled or waste material added.

(4) Sources used in residential premises designed to house four or less families.

(5) Space heaters which heat by direct heat transfer.

(6) Mobile sources.

(7) Laboratory equipment used exclusively for chemical or physical analyses.

(8) Other sources and classes of sources determined to be of minor significance by the Department.

(9) Physical changes to sources when the Department has determined the physical changes to be of minor significance.

(b) When the Department allows de minimis emission increases under § 127.449 (relating to de minimis emission increases), approval is not required for the construction, modification, reactivation or installation of the source creating the de minimis emission increases.

(c) For physical changes requested under subsection (a)(9), the Department will process requests for determinations as follows:

(1) For physical changes of minor significance that would not violate the terms of an operating permit, the act, the Clean Air Act or the regulations adopted under the act or the Clean Air Act and which would not result in emission increases above the emissions allowable in the operating permit or result in an increased ambient air quality impact for an air contaminant and which does not add new equipment, the applicant shall request approval, in writing, from the Department and the change may be made within 7 days of receipt by the Department of a written request unless the Department requests additional information or objects to the change within the 7- day period.

(2) For physical changes of minor significance that would not violate the terms of an operating permit, the act, the Clean Air Act or the regulations thereunder, and which would not result in emission increases above the emissions allowable in the operating permit or result in an increased ambient air quality impact for an air contaminant and which adds new equipment, the applicant shall request approval, in writing, from the Department and the change may be made within 15 days of receipt of the written request unless the Department requests additional information or objects to the change within the 15-day period.

(3) For physical changes of minor significance that would violate the terms of an operating permit, the plan approval exemption may be processed contemporaneously with the minor operating permit modification under § 127.462 (relating to minor operating permit modifications) unless precluded by the Clean Air Act or the regulations thereunder, or the applicant may request approval, in writing, from the Department for the plan approval exemption. The change may not be made until written approval is obtained from the Department and the necessary permit modification procedure has been completed.

(d) The Department may establish a list of sources and physical changes meeting the requirements of subsections (a)(8) and (9). The Department will publish notice of its intention to establish or modify the list in the *Pennsylvania Bulletin* and will establish a comment period of at least 30 days. After the close of the comment period, the Department will publish the final list or any modifications to the final list in the *Pennsylvania Bulletin*.

Source

The provisions of this § 127.14 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 3, 1972, effective March 20, 1972, 2 Pa.B. 383; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial pages (173551) to (173552).

Notes of Decisions

Minor Significance

A rock quarry is not a source of minor significance within the meaning of 25 Pa. Code § 127.14 (relating to exemptions) if nothing in the record supports such a determination and the DER has not so determined. *Mignatti Construction Co., Inc. v. Environmental Hearing Board*, 411 A.2d 860 (Pa. Cmwlth. 1980).

Cross References

This section cited in 25 Pa. Code § 127.3 (relating to operational flexibility); 25 Pa. Code § 127.462 (relating to minor operating permit modifications); and 25 Pa. Code § 127.709 (relating to fees for requests for determination).

§ 127.21. [Reserved].

Source

The provisions of this § 127.21 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 3, 1972, effective March 20, 1972, 2 Pa.B. 383; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; reserved November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial pages (173552) and (149149).

§ 127.22. [Reserved].

Source

The provisions of this § 127.22 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 3, 1972, effective March 20, 1972, 2 Pa.B. 383; reserved March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169. Immediately preceding text appears at serial pages (126092), (50977) and (84523).

§ 127.23. [Reserved].

Source

The provisions of this § 127.23 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 3, 1972, effective March 20, 1972, 2 Pa.B. 383; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3788; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; reserved November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial pages (149149) to (149150).

§ 127.24. [Reserved].

Source

The provisions of this § 127.24 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 3, 1972, effective March 20, 1972, 2 Pa.B. 383; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; amended May 25, 1990, effective May 26, 1990, 20 Pa.B. 2746; reserved November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial page (149150).

§ 127.25. Compliance requirement.

A person may not cause or permit the operation of a source subject to § 127.11 (relating to plan approval requirements), unless the source and air cleaning

devices identified in the application for the plan approval and the plan approval issued to the source, are operated and maintained in accordance with specifications in the application and conditions in the plan approval issued by the Department. A person may not cause or permit the operation of an air contamination source subject to this chapter in a manner inconsistent with good operating practices.

Source

The provisions of this § 127.25 adopted May 23, 1975, effective June 9, 1975, 5 Pa.B. 1346; amended July 23, 1976, effective July 24, 1976, 6 Pa.B. 1732; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial pages (149150) to (149151).

§ 127.31. [Reserved].

Source

The provisions of this § 127.31 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved March 3, 1972, effective March 20, 1972, 2 Pa.B. 383.

§ 127.32. Transfer of plan approvals.

(a) A plan approval may not be transferred from one person to another except when a change of ownership is demonstrated to the satisfaction of the Department and the Department approves the transfer of the plan approval in writing.

(b) Section 127.12a (relating to compliance review) applies to a request for transfer of a plan approval.

(c) A plan approval is valid only for that specific source and that specific location of the source as described in the application.

Source

The provisions of this § 127.32 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial page (149151).

§ 127.33. [Reserved].

Source

The provisions of this § 127.33 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478. Immediately preceding text appears at serial page (53965).

§ 127.34. [Reserved].

Source

The provisions of this § 127.34 adopted May 25, 1990, effective May 26, 1990, 20 Pa.B. 2746; reserved November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial pages (149151) to (149152).

§ 127.35. Maximum achievable control technology standards for hazardous air pollutants.

(a) This section establishes the process that the Department will follow in establishing maximum achievable control technology standards in plan approvals.

(b) The regulations establishing performance or emission standards promulgated under section 112 of the Clean Air Act (42 U.S.C.A. § 7412) at 40 CFR Part 63 (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories) are incorporated by reference into the Department's plan approval program. After the effective date of the performance or emission standard, new, reconstructed, modified and existing sources shall comply with the performance or emission standards pursuant to the compliance schedule established under section 112 of the Clean Air Act and the regulations thereunder.

(c) If the Administrator of the EPA has not promulgated a standard to control the emissions of hazardous air pollutants for a category or subcategory of major stationary sources under section 112 of the Clean Air Act pursuant to the schedule established under section 112(c) of the Clean Air Act, the Department will establish a performance or emission standard on a case-by-case basis for individual sources or a category of sources for those major stationary sources.

(d) The Department will establish performance or emission standards as required by section 112(g) of the Clean Air Act for the construction, reconstruction or modification of sources.

(e) The standards established under this section will be incorporated into the plan approval of each source within the category or subcategory for which a maximum achievable control technology requirement has been established. The Department has the authority to require, in the plan approval, reasonable monitoring, recordkeeping and reporting requirements for sources which emit hazardous air pollutants.

(f) A person challenging the performance or emission standards established by the Department has the burden to demonstrate that the performance or emission standard does not meet the requirements of section 112 of the Clean Air Act.

(g) In addition to the requirements of this section, the Department is authorized to require that new sources demonstrate in the plan approval application that the source will reduce or control emissions of air pollutants, including hazardous air pollutants, by using best available technology.

(h) The early emissions reduction program authorized under section 112(i)(5) of the Clean Air Act is incorporated by reference into the Department's plan approval and operating permit program.

Source

The provisions of this § 127.35 adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899.

Cross References

This section cited in 25 Pa. Code § 127.450 (relating to administrative operating permit amendments); and 25 Pa. Code § 127.702 (relating to plan approval fees).

§ 127.36. Health risk-based emission standards and operating practice requirements.

(a) This section describes the process for establishing health risk-based emission standards and operating practice requirements.

(b) When needed to protect public health, welfare and the environment from emissions of hazardous air pollutants from new and existing sources, the Department may impose health risk-based emission standards or operating practice requirements, except as precluded by section 6.6(d)(2) and (3) of the act (35 P. S. § 4006.6(d)(2) and (3)).

(c) In developing health risk-based emission standards or operating practice requirements, the Department will provide an explanation and rationale for the standards or requirements.

(d) The Department will provide for public review and comment on a plan approval, guideline and regulation which contains a health risk-based emission standard or operating practice requirement.

(e) Standards or requirements adopted under this section shall be developed using an analysis which, among other factors, considers, when appropriate for a source or source category, the criteria in section 112(f)(1) of the Clean Air Act (42 U.S.C.A. § 7412(f)(1)), in assessing the proposed risk to the public health, welfare and the environment from the source.

(f) The standards established under this section shall be incorporated into the plan approval of each source within the category or subcategory for which the health risk-based performance or emission standard has been established. The Department has the authority to require, in the plan approval and operating permit, reasonable monitoring, recordkeeping and reporting requirements for sources which emit hazardous air pollutants.

(g) A person challenging a performance or emission standard established by the Department has the burden to demonstrate that the performance or emission standard does not meet the requirements of section 112 of the Clean Air Act.

Source

The provisions of this § 127.36 adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899.

§ 127.41. [Reserved].

Source

The provisions of this § 127.41 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; reserved November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial page (149152).

§ 127.42. [Reserved].

Source

The provisions of this § 127.42 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; reserved August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478. Immediately preceding text appears at serial pages (35377) to (35378).

§ 127.43. [Reserved].

Source

The provisions of this § 127.43 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; reserved August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478. Immediately preceding text appears at serial pages (35379) to (35380).

§ 127.43a. Municipal notification.

The applicant for a plan approval shall notify the local municipality and county where the air pollution source is to be located that the applicant has applied for the plan approval as required by section 1905-A of The Administrative Code of 1929 (71 P. S. § 510-5). The notification shall clearly describe the source and modifications that are to take place. The notice shall state that there is a 30-day comment period which begins upon receipt of the notice by the municipality and county.

Authority

The provisions of this § 127.43a issued under section 5 of the Air Pollution Control Act (35 P. S. § 4005).

Source

The provisions of this § 127.43a adopted March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169.

Cross References

This section cited in 25 Pa. Code § 127.12 (relating to content of applications).

§ 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.

Authority

The provisions of this § 127.44 amended under sections 5(a)(1) and 6(b.3) of the Air Pollution Control Act (35 P.S. §§ 4005(a)(1) and 4006.1(b.3)).

Source

The provisions of this § 127.44 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1173; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899; amended May 23, 2008, effective May 24, 2008, 38 Pa.B. 2365. Immediately preceding text appears at serial pages (327809) to (327810).

Cross References

This section cited in 25 Pa. Code § 127.45 (relating to contents of notice); 25 Pa. Code § 127.46 (relating to filing protests); 25 Pa. Code § 127.218 (relating to PALs); 25 Pa. Code § 127.424 (relating to public notice); and 25 Pa. Code § 127.702 (relating to plan approval fees).

§ 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 facilty 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).

Authority

The provisions of this § 127.45 amended under sections 5(a)(1) and 6(a)(1) of the Air Pollution Control Act (35 P. S. §§ 4005(a)(1) and 4006.1(b.3)).

Source

The provisions of this § 127.45 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899; amended May 23, 2008, effective May 24, 2008, 35 Pa.B. 2365. Immediately preceding text appears at serial page (327810).

Cross References

This section cited in 25 Pa. Code § 127.44 (relating to public notice).

§ 127.46. Filing protests.

(a) A protest to a proposed action shall be filed with the Department within 30 days of the date that notice of the proposed action was published under § 127.44 (relating to public notice).

(b) A protest shall include the following:

(1) Name, address and telephone number of the person filing the protest.

(2) Identification of the proposed plan approval issuance being opposed.

(3) Concise statement of the objections to the plan approval issuance and the relevant facts upon which the objections are based.

Authority

The provisions of this § 127.46 amended under section 5 of the Air Pollution Control Act (35 P. S. § 4005).

Source

The provisions of this § 127.46 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; corrected October 7, 1983, effective August 13, 1983, 13 Pa.B. 3094; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1173. Immediately preceding text appears at serial page (84527).

Cross References

This section cited in 25 Pa. Code § 127.47 (relating to consideration of protest); 25 Pa. Code § 127.48 (relating to conferences and hearings); and 25 Pa. Code § 127.51 (relating to plan approval disposition).

§ 127.47. Consideration of protest.

(a) A protest alerts the Department to the fact and nature of the objection of the protestant to the proposed action on the application.

(b) The Department is not required to consider protests filed subsequent to the time designated in § 127.46 (relating to filing protests), but it may consider them if filed prior to issuance of a plan approval as detailed in this subchapter.

Authority

The provisions of this § 127.47 amended under section 5 of the Air Pollution Control Act (35 P. S. § 4005).

Source

The provisions of this § 127.47 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1173; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial page (149156).

§ 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.

Authority

The provisions of this § 127.48 amended under sections 5 and 6 of the Air Pollution Control Act (35 P. S. §§ 4005(a)(1) and 4006.1(b.3)).

Source

The provisions of this § 127.48 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; amended May 23, 2008, effective May 24, 2008, 38 Pa.B. 2365. Immediately preceding text appears at serial pages (221963) to (221964).

§ 127.49. Conference or hearing procedure.

(a) Conferences and hearings shall be conducted by a presiding officer.

(b) Except if provided otherwise in the notice or by the presiding officer, conferences and hearings shall be conducted in an informal manner and the rules of evidence are not applicable.

(c) When provided in the notice, a participant may be required to present a written statement, together with exhibits required, at the conference or hearing for the use of the participants. Persons unable to attend the conference or hearing may submit three copies of a written statement and exhibits within 10 days thereafter to the Department.

(d) At the conference or hearing, a participant may, at his own cost, record the proceedings using a stenographer, tape recorder or other means.

Source

The provisions of this § 127.49 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1173; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial page (149157).

§ 127.50. Conference or hearing record.

(a) Following the conference or hearing, the presiding officer shall prepare a summary which shall contain the following:

(1) Identification of the plan approval application and the name of the plant or facility which is being constructed or modified.

(2) The names and addresses of each participant and whom the participant represents.

(3) The substance of the opening and closing statement by the presiding officer.

(4) The substance of the matters discussed or testified to and agreements reached by the participants.

(5) Other relevant matters to inform the Department of the results of the conference or hearing.

(b) A copy of the summary shall be submitted upon request to each participant in the proceeding. Copies of the summary, together with any transcript of the proceedings, written statements, exhibits and protests will also be placed in the file in the appropriate office in the Department for review by the participants prior to disposition of the plan approval application.

Source

The provisions of this § 127.50 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1173; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial pages (149157) to (149158).

§ 127.51. Plan approval disposition.

(a) After reviewing a protest or record of a conference or hearing, the Department may take action authorized by this chapter.

(b) A notice of denial or a plan approval will be issued to the applicant. Each protestant who has submitted a comment within the time period set forth in § 127.46 (relating to filing protests) will be notified personally or by mailing a copy of the plan approval disposition to the address set forth in the protest.

(c) The Department will also publish notice of its action in the *Pennsylvania Bulletin* which will be deemed to be sufficient notice to others.

Source

The provisions of this § 127.51 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1173; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial page (149158).

§ 127.52. [Reserved].

Source

The provisions of this § 127.52 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; reserved August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478. Immediately preceding text appears at serial pages (35384) and (62474).

Subchapter C. [Reserved]

§ 127.61. [Reserved].

Source

The provisions of this § 127.61 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; corrected June 29, 1979, effective July 1, 1979, 9 Pa.B. 2150; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial page (149159).

§ 127.62. [Reserved].

Source

The provisions of this § 127.62 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; corrected June 29, 1979, effective July 1, 1979, 9 Pa.B. 2150; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial page (149160).

§ 127.63. [Reserved].

Source

The provisions of this § 127.63 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; corrected June 29, 1979, effective July 1, 1979, 9 Pa.B. 2150; amended June 19, 1981, effective June 20, 1981, 11 Pa.B. 2118; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial pages (149160) to (149161).

§ 127.64. [Reserved].

Source

The provisions of this § 127.64 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; corrected June 29, 1979, effective July 1, 1979, 9 Pa.B. 2150; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial page (149162).

§ 127.65. [Reserved].

Source

The provisions of this § 127.65 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; corrected June 29, 1979, effective July 1, 1979, 9 Pa.B. 2150; amended June 19, 1981, effective June 20, 1981, 11 Pa.B. 2118; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial pages (149162) to (149163).

§ 127.66. [Reserved].

Source

The provisions of this § 127.66 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; corrected June 29, 1979, effective July 1, 1979, 9 Pa.B. 2150; amended June 19, 1981, effective June 20, 1981, 11 Pa.B. 2118; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial pages (149163) to (149164).

§ 127.67. [Reserved].

Source

The provisions of this § 127.67 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; corrected June 29, 1979, effective July 1, 1979, 9 Pa.B. 2150; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; corrected April 13, 1990, effective March 18, 1989, 20 Pa.B. 2032; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial page (149165).

§ 127.68. [Reserved].

Source

The provisions of this § 127.68 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial page (149166).

§ 127.69. [Reserved].

Source

The provisions of this § 127.69 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; corrected June 29, 1979, effective July 1, 1979, 9 Pa.B. 2150; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; corrected April 13, 1990, effective March 18, 1989, 20 Pa.B. 2032; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial page (149166).

§§ 127.70—127.73. [Reserved].

Source

The provisions of these §§ 127.70—127.73 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; corrected June 29, 1979, effective July 1, 1979, 9 Pa.B. 2150; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial pages (149166) to (149168).

Subchapter D. PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

Sec.
127.81. Purpose.
127.82. Scope.
127.83. Adoption of program.

Cross References

This subchapter cited in 25 Pa. Code § 127.13 (relating to extensions); 25 Pa. Code § 127.44 (relating to public notice); 25 Pa. Code § 127.45 (relating to contents of notice); 25 Pa. Code § 127.449 (relating to de minimis emission increases); 25 Pa. Code § 127.450 (relating to administrative operating permit amendments); 25 Pa. Code § 127.702 (relating to plan approval fees); 25 Pa. Code § 127.704 (relating to Title V operating permit fees under Subchapter G); and 25 Pa. Code § 139.12 (relating to emissions of particulate matter).

§ 127.81. Purpose.

The purpose of this subchapter is to adopt the Prevention of Significant Deterioration (PSD) requirements promulgated by the United States Environmental Protection Agency under the Clean Air Act. The requirements are adopted to make the PSD requirements independently enforceable by the Department and to implement Part C of the Clean Air Act.

Source

The provisions of this § 127.81 adopted May 30, 1980, effective May 31, 1980, 10 Pa.B. 2160; reserved March 20, 1981, effective March 21, 1981, 11 Pa.B. 1025; amended June 17, 1983, effective June 18, 1983, 13 Pa.B. 1940. Immediately preceding text appears at serial page (62483).

Notes of Decisions

Petition for review of EPA administrative order which sought immediate cessation of construction and/or operation of a gas turbine facility was not a final action for purposes of direct review by the court of appeals. *Solar Turbines, Inc. v. Seif*, 879 F.2d 1073 (1989).

§ 127.82. Scope.

The requirements adopted in this chapter do not apply to sources located in areas under the jurisdiction of local air pollution control agencies under section 12 of the act (35 P. S. § 4012). The local agencies may adopt such requirements as they deem appropriate.

Source

The provisions of this § 127.82 adopted May 30, 1980, effective May 31, 1980, 10 Pa.B. 2160; reserved March 20, 1981, effective March 21, 1981, 11 Pa.B. 1025; amended June 17, 1983, effective June 18, 1983, 13 Pa.B. 1940. Immediately preceding text appears at serial page (62483).

§ 127.83. Adoption of program.

The Prevention of Significant Deterioration requirements promulgated in 40 CFR 52 by the Administrator of the EPA under section 161 of the Clean Air Act (42 U.S.C.A. § 7471) are adopted in their entirety by the Department and incorporated herein by reference. The adoption of these requirements supplements the requirements of this chapter and does not supersede or rescind requirements of the act or this article. The term ''Administrator'' used in 40 CFR 52.21(b)(17), (f)(1)(v), (3) and (4)(i), (g)(1)—(6), (l)(2), (p)(1) and (2) and (t) means the Administrator of the EPA. The term ''Administrator'' used in 40 CFR 52.21(b)(3)(iii), (r)(2) and (w)(2) means the Administrator of the EPA or the Secretary of the Department. The term ''Administrator'' means the Department in all other portions of 40 CFR 52.21.

Authority

The provisions of this § 127.83 amended under section 5 of the Air Pollution Control Act (35 P. S. § 4005).

Source

The provisions of this § 127.83 adopted June 17, 1983, effective June 18, 1983, 13 Pa.B. 1940; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169. Immediately preceding text appears at serial page (114831).

Notes of Decisions

In evaluating application by electric utility for approval of plan to build electric generating plant, Department of Environmental Protection could use significant impact levels (SIL) method to determine whether proposed electric generating plant's emissions would not cause or contribute to air pollution in nearby national park in violation of national ambient air quality standards or the allowable increment; draft of federal manual for new source review included SIL as a de minims threshold, manual was considered authoritative as a primary guidance document on the degree of increment consumption, and Department's use of SIL threshold balanced Congress' intent in passing the Clean Air Act. *Croce v. Department of Environmental Protection*, 921 A.2d 567, 577-578 (Pa. Cmwlth. 2007).

Department's consideration of Federal best available control technology criteria when drafting ''best available technology'' criteria for municipal waste incineration facilities was not an error of law and DER did not err in not requiring that the ''lowest achievable emission rate'' be included in plan approval application. *T.R.A.S.H., Ltd. v. Department of Environmental Resources*, 574 A.2d 721 (Pa. Cmwlth. 1990); appeal denied 593 A.2d 429 (Pa. 1990).

Subchapter E. NEW SOURCE REVIEW

Sec.

Source

The provisions of this Subchapter E adopted January 14, 1994, effective January 15, 1994, 24 Pa.B. 443, unless otherwise noted.

Cross References

This subchapter cited in 25 Pa. Code § 121.1 (relating to definitions); 25 Pa. Code § 127.13 (relating to extensions); 25 Pa. Code § 127.44 (relating to public notice); 25 Pa. Code § 127.449 (relating to de minimis emission increases); 25 Pa. Code § 127.450 (relating to administrative operating permit amendments); 25 Pa. Code § 127.702 (relating to plan approval fee); 25 Pa. Code § 139.12 (relating to emissions of particulate matter); and 25 Pa. Code § 145.205 (relating to emission reduction credit provisions).

§ 127.201. General requirements.

(a) A person may not cause or permit the construction or modification of an air contamination facility in a nonattainment area or having an impact on a nonattainment area unless the Department or an approved local air pollution control agency has determined that the requirements of this subchapter have been met.

(b) The nonattainment area classification that applies for offset trading and offset ratio selection shall be the highest classification designated by the EPA Administrator in 40 CFR 81.339 (relating to Pennsylvania) or by operation of law.

(c) The NSR requirements of this subchapter also apply to a facility located in an attainment area for ozone and within an ozone transport region that emits or has the potential to emit at least 50 TPY of VOC or 100 TPY of NO_x. A facility within either an unclassifiable/attainment area for ozone or within a marginal or incomplete data nonattainment area for ozone or within a basic nonattainment area for ozone and located within an ozone transport region will be considered a major facility and shall be subject to the requirements applicable to a major facility located in a moderate nonattainment area.

(d) The NSR requirements of this subchapter apply to an owner or operator of a facility at which a net emissions increase that is significant would occur as determined in accordance with § 127.203a (relating to applicability determination). If an emissions increase meets or exceeds the applicable emissions rate that is significant as defined in § 121.1 (relating to definitions), the facility is subject to the permitting requirements under § 127.205 (relating to special permit requirements). An emissions increase subject to this subchapter must also be offset through the use of ERCs at the offset ratios specified in § 127.210 (relating to offset ratios). The generation, use, transfer and registration requirements for ERCs are listed in §§ 127.206—127.209.

(e) In the event of an inconsistency between this rule and any other rule promulgated by the Department, the inconsistency must be resolved by the application of the more stringent provision, term, condition, method or rule.

(f) A facility located in Bucks, Chester, Delaware, Montgomery or Philadelphia Counties that emits or has the potential to emit at least 25 TPY of VOC or NO_x will be considered a major facility and shall be subject to the requirements applicable to a major facility located in a severe nonattainment area for ozone.

(g) $PM_{2.5}$ and PM-10 emissions include gaseous emissions from a facility or activity that condense to form PM at ambient temperatures, if present, in accordance with the following requirements:

(1) Beginning January 1, 2011, or an earlier date established by the Administrator of the EPA, condensable PM shall be accounted for in applicability determinations and for $PM_{2.5}$ and PM-10 emission limitations established in a plan approval or operating permit issued under this chapter.

(2) Compliance with emissions limitations for $PM_{2.5}$ and PM-10 issued prior to January 1, 2011, or an earlier date established by the Administrator, may not be based on condensable PM unless required by the terms and conditions of a plan approval, operating permit or the SIP.

(3) Applicability determinations made prior to January 1, 2011, or an earlier date established by the Administrator, without accounting for condensable PM may not be considered in violation of this subchapter unless the applicable plan approval, operating permit or SIP includes requirements for condensable PM.

Source

The provisions of this § 127.201 amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2385; amended September 2, 2011, effective September 3, 2011, 41 Pa.B. 4761. Immediately preceding text appears at serial pages (333531) to (333532).

Cross References

This section cited in 25 Pa. Code § 121.1 (relating to definitions).

§ 127.201a. Measurements, abbreviations and acronyms.

Measurements, abbreviations and acronyms used in this subchapter are defined as follows:

BACT—Best available control technology

BAT—Best available technology

CEMS—Continuous emissions monitoring system

CERMS—Continuous emissions rate monitoring system

CO—Carbon monoxide

CPMS—Continuous parametric monitoring system
ERC—Emission reduction credit
LAER—Lowest achievable emission rate
lb—Pounds
MACT—Maximum achievable control technology
MERC—Mobile emission reduction credit
$\mu g/m^3$—Micrograms per cubic meter
mg/m^3—Milligrams per cubic meter
NO_x—Nitrogen oxides
NSPS—New source performance standard
NSR—New source review
O_2—Oxygen
PAL—Plantwide Applicability Limit
PEMS—Predictive emissions monitoring system
PM—Particulate matter
$PM_{2.5}$—Particulate matter less than or equal to 2.5 micrometers
PM-10—Particulate matter less than or equal to 10 micrometers
RACT—Reasonably available control technology
SO_x—Sulfur oxides
TPY—Tons per year
VOC—Volatile organic compound

Source

The provisions of this § 127.201a adopted May 18, 2007, effective May 19, 2007, 37 Pa.B. 2365; amended September 2, 2011, effective September 3, 2011, 41 Pa.B. 4761. Immediately preceding text appears at serial pages (333532) and (327813).

§ 127.202. Effective date.

(a) The special permit requirements in this subchapter apply to an owner or operator of a facility to which a plan approval is issued by the Department after May 19, 2007, except the special permit requirements for precursors to $PM_{2.5}$, which apply as follows:

(1) NO_x and SO_2 after September 3, 2011.

(2) VOCs and ammonia after December 21, 2019.

(b) For SO_x, $PM_{2.5}$, PM-10, lead and CO, this subchapter applies until a given nonattainment area is redesignated as an unclassifiable or attainment area. After a redesignation, special permit conditions remain effective until the Department approves a permit modification request and modifies the permit.

Authority

The provisions of this § 127.202 amended under section 5(a)(1) and (8) of the Air Pollution Control Act (35 P.S. § 4005(a)(1) and (8)).

Source

The provisions of this § 127.202 amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2385; amended September 2, 2011, effective September 3, 2011, 41 Pa.B. 4761; amended December 20, 2019, effective December 21, 2019, 49 Pa.B. 7404. Immediately preceding text appears at serial page (358255).

§ 127.203. Facilities subject to special permit requirements.

(a) This subchapter applies to the construction of a new major facility or modification at an existing major facility located in a nonattainment area, an

ozone transport region or an attainment or unclassifiable area which impacts a nonattainment area in excess of the following significance levels:

Pollutant	*Averaging time*				
	Annual	*24 (hours)*	*8 (hours)*	*3 (hours)*	*1 (hours)*
SO_2	1.0 µg/m^3	5 µg/m^3	-	25 µg/m^3	-
PM-10	1.0 µg/m^3	5 µg/m^3	-	-	-
CO	-	-	0.5 mg/m^3	-	2 mg/m^3
Lead	-	0.1 µg/m^3	-	-	-
$PM_{2.5}$	0.2 µg/m^3	1.2 µg/m^3	-	-	-

(b) The following provisions apply to an owner or operator of a facility located in Bucks, Chester, Delaware, Montgomery or Philadelphia County or an area classified as a serious or severe ozone nonattainment area:

(1) The applicability requirements in § 127.203a (relating to applicability determination) apply except as provided by this subsection. The requirements of this subchapter apply if the aggregated emissions determined according to subparagraph (i) or (ii) exceed 25 TPY of NO_x or VOCs.

(i) The proposed increases and decreases in emissions are aggregated with the other increases in net emissions occurring over a consecutive 5 calendar-year period, which includes the calendar year of the modification or addition which results in the emissions increase. The aggregated VOC or NO_x emissions must meet the applicability requirements in paragraph (2) or (3).

(ii) The proposed increases and decreases in emissions are aggregated with other increases and decreases which occurred within 10 years prior to the date of submission of a complete plan approval application. If the aggregated emissions increase calculated using this subparagraph meets or exceeds the emissions rate that is significant, only the emissions offset requirements in § 127.205(3) (relating to special permit requirements) apply to the aggregated emissions.

(2) An increase in emissions of VOCs or NO_x, other than a de minimis emission increase, from a discrete operation, unit or other pollutant emitting activity at a facility with a potential to emit less than 100 TPY of VOCs or NO_x, is considered a modification unless the owner or operator elects to offset the increase by a greater reduction in emissions of VOCs or NO_x from other operations, units or activities within the facility at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not elect to offset at the required ratio, the increase is considered a modification and the BACT requirement is substituted for LAER. The owner or operator of the facility shall comply with all applicable requirements including the BAT requirement.

(3) An increase in emissions of VOCs or NO_x, other than a de minimis emission increase, from a discrete operation, unit or other pollutant emitting activity at a facility with a potential to emit of 100 TPY or more, is considered a modification unless the owner or operator elects to offset the increase by a greater reduction in emissions of VOCs or NO_x from other operations, units or activities within the facility at an internal offset ratio of at least 1.3 to 1. If the owner or operator elects to offset at the required ratio, the LAER requirement

does not apply. The owner or operator of the facility shall comply with the applicable requirements including the BAT requirement.

(c) The NSR requirements of this subchapter apply to an owner or operator of:

(1) A facility at which the net emissions increase as determined under this subchapter meets or exceeds the applicable emissions rate that is significant. A decrease in a facility's emissions will not qualify as a decrease for purposes of this subchapter unless the ERC provisions in § 127.207(1) and (3)—(7) (relating to creditable emissions decrease or ERC generation and creation) are met.

(2) A major facility subject to this subchapter which was deactivated for a period in excess of 1 year and is not in compliance with the reactivation requirements of § 127.215 (relating to reactivation).

(d) The requirements of this subchapter which apply to VOC emissions from major facilities and major modifications apply to NO_x emissions from major facilities and major modifications in an ozone transport region or an ozone nonattainment area classified as marginal, basic, moderate, serious, severe or extreme, except in areas which the EPA has determined that additional reductions of NO_x will not produce net air quality benefits.

(e) The following provisions apply to an owner or operator of a major facility subject to this subchapter:

(1) Approval to construct or modify an air contamination source or facility does not relieve an owner or operator of the responsibility to comply fully with applicable provisions of the SIP and other requirements under local, State or Federal law.

(2) If a particular source or modification becomes a major facility or major modification solely by virtue of a relaxation in an enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant including a restriction on hours of operation, the requirements of this subchapter also apply to the source or modification as though construction had not yet commenced on the source or modification.

(f) The NSR requirements of this subchapter do not apply to an owner or operator of a major facility at which:

(1) A physical change or change in the method of operation still maintains its total facility-wide emissions below the PAL, meets the requirements in § 127.218 (relating to PALs) and complies with the PAL permit.

(2) A project results in a net emissions increase which does not meet or exceed the applicable emissions rate that is significant.

(3) A proposed de minimis increase results in a net emissions increase calculated using emissions increases and decreases which occurred within 10 years prior to the date of submission of a complete plan approval application, which does not meet or exceed the emissions rate that is significant.

(4) Construction of a new facility or a project at an existing major facility located in an attainment or unclassifiable area does not impact a nonattainment area for the applicable pollutant in excess of the significance level specified in § 127.203a.

Authority

The provisions of this § 127.203 amended under section 5(a)(1) and (8) of the Air Pollution Control Act (35 P.S. § 4005(a)(1) and (8)).

Source

The provisions of this § 127.203 amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2385; amended September 2, 2011, effective September 3, 2011, 41 Pa.B. 4761; amended December 20, 2019, effective December 21, 2019, 49 Pa.B. 7404. Immediately preceding text appears at serial pages (358255) to (358258).

Cross References

This section cited in 25 Pa. Code § 121.1 (relating to definitions); 25 Pa. Code § 127.204 (relating to emissions subject to this subchapter); 25 Pa. Code § 127.205 (relating to special permit requirements); 25 Pa. Code § 127.211 (relating to applicability determination); 25 Pa. Code § 127.212 (relating to portable facilities); 25 Pa. Code § 127.213 (relating to construction and demolition); and 25 Pa. Code § 127.218 (relating to PALs).

§ 127.203a. Applicability determination.

(a) The Department will conduct an applicability determination during its review of a plan approval application for the construction of a new major facility or modification at an existing major facility under this section. The owner or operator of the facility shall include in the plan approval application the estimate of an emissions increase in a regulated NSR pollutant from the project. The owner or operator shall calculate an emissions increase in a regulated NSR pollutant from a project in accordance with paragraph (1). The owner or operator shall calculate a net emissions increase in accordance with paragraph (1)(ii), if the emissions increase from a project equals or exceeds the applicable emissions rate that is ''significant'' as defined in § 121.1 (relating to definitions). If the emissions increase from a project does not exceed the listed applicable emissions rate that is significant, the owner or operator shall calculate the net emissions increase in accordance with paragraph (2).

(1) As part of the plan approval application, the owner or operator of the facility shall calculate whether a significant emissions increase and a significant net emissions increase will occur as a result of a physical change or change in the method of operation. The owner or operator of the facility shall use the procedures in subparagraph (i) to calculate the emissions increase in a regulated NSR pollutant due to the project, and the procedures in subparagraph (ii) to calculate the net emissions increase in a regulated NSR pollutant. A project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase and a significant net emissions increase. If the project causes a significant emissions increase, the project is a major modification if it also results in a significant net emissions increase.

(i) The emissions increase in a regulated NSR pollutant due to the project will be the sum of the following:

(A) For existing emissions units, an emissions increase of a regulated NSR pollutant is the difference between the projected actual emissions and

the baseline actual emissions for each unit, as determined in paragraphs (4) and (5). When calculating an increase in emissions that results from the particular project, exclude that portion of the unit's emissions following completion of the project that existing units could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that is also unrelated to the particular project, including all increased utilization due to product demand growth as specified in paragraph (5)(i)(C).

(B) For new emissions units, the emissions increase of a regulated NSR pollutant will be the potential to emit from each new emissions unit.

(ii) The net emissions increase for a regulated NSR pollutant emitted by a major facility will be the amount by which the sum of the following exceeds zero:

(A) The increase in emissions from a physical change or change in the method of operation at a major facility as calculated under subparagraph (i).

(B) Other increases and decreases in actual emissions at the major facility that are contemporaneous with the project and are otherwise creditable.

(I) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date 5 years before construction on the project commences and the date that construction on the project is completed.

(II) Baseline actual emissions for calculating increases are determined as specified under paragraph (4), except that paragraph (4)(i)(D) does not apply.

(2) As part of the plan approval application for a proposed de minimis emission increase, the owner or operator of the facility shall use subparagraphs (i) and (ii) to calculate the net emissions increase for a regulated NSR pollutant except $PM_{2.5}$ and $PM_{2.5}$ precursors. For a proposed de minimis increase in which the net emissions increase calculated using subparagraphs (i) and (ii) meets or exceeds the emissions rate that is significant, only the emissions offset requirements in this subchapter apply to the net emissions increase.

(i) The net emissions increase is the sum of the proposed de minimis increase due to the project and the previously determined increases in potential emissions or actual emissions and decreases in actual emissions that are contemporaneous with the project.

(ii) An increase or decrease is contemporaneous if it occurred within 10 years prior to the date of the Department's receipt of a complete plan approval application.

(3) An increase or a decrease is creditable for applicability determination purposes if it meets the following conditions:

(i) The Department has not relied on it in issuing a permit for the facility under this subchapter, for which the permit is in effect when the increase in emissions from the project occurs.

(ii) The increase is creditable to the extent that the new level of emissions exceeds the old level of emissions.

(iii) An actual emissions decrease is creditable if the following conditions are met:

(A) The ERC provisions in § 127.207(1) and (3)—(7) (relating to creditable emissions decrease or ERC generation and creation) have been complied with, and the decrease in emissions is Federally enforceable by the time construction begins on the project. The plan approval for the project will contain a provision specifying that the emissions decrease is Federally enforceable on or before the construction date.

(B) The emissions decrease is such that when compared with the proposed emissions increase there is no significant change in the character of the emissions, including seasonal emission patterns, stack heights or hourly emission rates.

(C) The emissions decrease represents approximately the same qualitative significance for public health and welfare as attributed to the proposed increase. This requirement is satisfied if the emissions rate that is significant is not exceeded.

(D) An emissions decrease or an ERC generated at the facility may be used as a creditable decrease in a net emissions increase. The use of the ERCs in applicability determinations for netting purposes is limited to the period specified in paragraphs (1)(ii) and (2). A portion of an ERC generated at another facility, acquired by trade and incorporated in a plan approval for use at the facility, is not creditable as an emissions decrease.

(iv) An actual or potential emissions increase that results from a physical change in a facility occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. A replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(4) The following procedures apply in determining the baseline actual emissions for an existing emissions unit:

(i) For an existing emissions unit, baseline actual emissions are the average rate, in TPY, at which the unit emitted the regulated NSR pollutant during a consecutive 24-month period selected by the owner or the operator within the 5-year period immediately prior to the date a complete plan approval application is received by the Department. The Department may approve the use of a different consecutive 24-month period within the last 10 years upon a written determination that it is more representative of normal source operation.

(A) The average rate includes fugitive emissions to the extent quantifiable and emissions associated with startups and shutdowns; the average rate does not include excess emissions including emissions associated with upsets or malfunctions.

(B) The average rate is adjusted downward to exclude noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

(C) The average rate is adjusted downward to exclude emissions that would have exceeded an emissions limitation with which the facility must currently comply, had the facility been required to comply with the limitations during the consecutive 24-month period. The baseline actual emissions is based on the emissions limitation in this subchapter or a permit limitation or other more stringent emissions limitation required by the Clean Air Act or the act, whichever is more restrictive.

(D) For a regulated NSR pollutant, when a project involves multiple emissions units, the same consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for all regulated NSR pollutants unless the owner or operator demonstrates, in writing, to the Department that a different consecutive 24-month period is more appropriate and the Department approves, in writing, the different consecutive 24-month period for a regulated NSR pollutant or pollutants.

(E) The average rate is not based on a consecutive 24-month period for which there is inadequate information for:

(I) Determining annual emissions, in TPY.

(II) Adjusting this amount if required by clause (B) or (C).

(F) The average rate is not greater than the emissions previously submitted to the Department in the required emissions statement and for which applicable emission fees have been paid.

(ii) For a new emissions unit, the baseline actual emissions equal zero and thereafter, for all other purposes, shall equal the unit's potential to emit.

(iii) The baseline actual emissions is determined by measurement, calculations or estimations in the order of the following preferences:

(A) Monitoring systems including:

(I) CEMS data interpolated to annual emissions using flow meters and conversion factors.

(II) PEMS approved, in writing, by the Department.

(B) Other measurements and calculations including:

(I) Stack measurement which generates emission estimates using stack test derived emission factors and throughput.

(II) A mass balance equation which includes the following elements:

(-a-) The amount of materials used per unit of time, determined through measurements of parameters representing process conditions.

(-b-) The emissions per unit mass of material used, determined using mass balance techniques.

(-c-) The annual emissions, calculated using emissions per unit mass of material and amount of material used per unit of time.

(C) Emission factors, including generally recognized and accepted emission factors by EPA, such as USEPA ''Compilation of Air Pollutant Emission Factors'' (AP-42) or other emission factors accepted by the Department.

(D) Other calculations and measurements as approved by the Department.

(5) Projected actual emissions is the maximum annual rate, in TPY, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major facility. The following procedures apply in determining the projected actual emissions of a regulated NSR pollutant for an emissions unit, before beginning actual construction on the project:

(i) The owner or operator of the major facility shall:

(A) Consider all relevant information, including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, and the company's filings with the State or Federal regulatory authorities.

(B) Include fugitive emissions to the extent quantifiable, and emissions associated with startups and shutdowns.

(C) Exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following completion of the project that existing units could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that is also unrelated to the particular project, including any increased utilization due to product demand growth.

(ii) In lieu of using the method set out in subparagraph (i), the owner or operator of the major facility may elect to use the emissions unit's potential to emit, in TPY.

(iii) If the projected actual emissions for a regulated NSR pollutant are in excess of the baseline actual emissions, the following apply:

(A) The projected actual emissions for the regulated NSR pollutant must be incorporated into the required plan approval or the operating permit as an emission limit.

(B) The owner or operator shall monitor the emissions of the regulated NSR pollutant for which a limit is established in clause (A) and calculate and maintain a record of emissions, in TPY on a calendar year basis, for 5 years following resumption of regular operations after the change, or for 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at the emissions unit.

(C) The owner or operator shall record sufficient information to identify for all emission units in the approved project their total actual annual emissions and their actual annual emissions increase due to the project.

(D) The owner or operator shall submit a report to the Department, within 60 days after the end of each calendar year, which contains the emissions data required by clauses (B) and (C). This report must also contain a demonstration of how these emissions were determined if the determination was not by direct measurement with a Department-certified CEMS system.

(b) An owner or operator of a major facility with a PAL for a regulated NSR pollutant shall comply with the requirements under § 127.218 (relating to PALs).

Source

The provisions of this § 127.203a adopted May 18, 2007, effective May 19, 2007, 37 Pa.B. 2365; amended September 2, 2011, effective September 3, 2011, 41 Pa.B. 4761.

Cross References

This section cited in 25 Pa. Code § 127.201 (relating to general requirements); 25 Pa. Code § 127.203 (relating to facilities subject to special permit requirements); 25 Pa. Code § 127.205 (relating to special permit requirements); 25 Pa. Code § 127.206 (relating to ERC general requirements); and 25 Pa. Code § 127.213 (relating to construction and demolition).

§ 127.204. Emissions subject to this subchapter.

(a) In determining whether a project exceeds the emission rate that is significant or the significance levels specified in § 127.203 (relating to facilities subject to special permit requirements), the potential to emit, actual emissions and actual emissions increase shall be determined by aggregating the emissions or emissions increases from contiguous or adjacent properties under the common control of a person or entity. The aggregation must include emissions resulting from the following: flue emissions, stack and additional fugitive emissions, material transfer, use of parking lots and paved and unpaved roads on the facility property, storage piles and other emission generating activities resulting from operation of the new or modified facility.

(b) Secondary emissions may not be considered in determining whether a facility meets the requirements of this subchapter. If a facility is subject to this subchapter on the basis of the direct emissions from the facility, the conditions of § 127.205 (relating to special permit requirements) shall also be met for secondary emissions.

Source

The provisions of this § 127.204 amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2385; amended September 2, 2011, effective September 3, 2011, 41 Pa.B. 4761. Immediately preceding text appears at serial page (327821).

§ 127.205. Special permit requirements.

The Department will not issue a plan approval, or an operating permit, or allow continued operations under an existing permit or plan approval unless the applicant demonstrates that the following special requirements are met:

(1) A new or modified facility subject to this subchapter shall comply with LAER, except as provided in § 127.203a(a)(2) (relating to applicability determination). When a facility is composed of several sources, only sources which are new or which are modified shall be required to implement LAER. In addition, LAER applies to the proposed modification which results in an increase in emissions and to subsequent or previous modifications which result in emissions increases that are directly related to and normally included in the project associated with the proposed modification and which occurred within the contemporaneous period of the proposed emissions increase.

(i) A project that does not commence construction within 18 months of the date specified in the plan approval shall be reevaluated for its compliance with LAER before the start of construction.

(ii) A project that discontinues construction for 18 months or more after construction is commenced shall be reevaluated for its compliance with LAER before resuming construction.

(iii) A project that does not complete construction within the time period specified in the plan approval shall be reevaluated for its compliance with LAER.

(iv) A project that is constructed in phases shall be reevaluated for its compliance with LAER if there is a delay of greater than 18 months beyond the projected and approved commencement date for each independent phase.

(2) Each facility located within this Commonwealth which meets the requirements of and is subject to this subchapter, which is owned or operated by the applicant, or by an entity controlling, controlled by or under common control with the applicant, and which is subject to emissions limitations shall be in compliance, or on a schedule for compliance approved by the Department in a plan approval or permit, with the applicable emissions limitation and standards contained in this article. A responsible official of the applicant shall certify as to the facilities' compliance in writing on a form provided by the Department.

(3) Each modification to a facility which meets the requirements of and is subject to this subchapter shall offset, in accordance with §§ 127.203, 127.203a and 127.210 (relating to facilities subject to special permit requirements; applicability determination; and offset ratios), the total of the net increase. Emissions offsets shall be required for the entire net emissions increase which occurred over the contemporaneous period except to the extent

that emissions offsets or other reductions were previously applied against emissions increases in an earlier applicability determination.

(4) Each new facility which meets the requirements of and is subject to this subchapter shall offset the potential to emit of that facility with ERCs in accordance with § 127.210.

(5) For a new or modified facility which meets the requirements of and is subject to this subchapter, an analysis shall be conducted of alternative sites, sizes, production processes and environmental control techniques for the proposed facility, which demonstrates that the benefits of the proposed facility significantly outweigh the environmental and social costs imposed within this Commonwealth as a result of its location, construction or modification.

(6) In the case of a new or modified facility which is located in a nonattainment area, and within a zone, identified by the EPA Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, emissions of a pollutant resulting from the proposed new or modified facility may not cause or contribute to emission levels which exceed the allowance permitted for the pollutant for the area from new or modified facilities in the SIP.

(7) The Department may determine that the BAT requirements of this chapter are equivalent to BACT or LAER.

Source

The provisions of this § 127.205 amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2365. Immediately preceding text appears at serial pages (313712) and (221975).

Cross References

This section cited in 25 Pa. Code § 127.201 (relating to general requirements); 25 Pa. Code § 127.203 (relating to facilities subject to special permit requirements); 25 Pa. Code § 127.203a (relating to applicability determination); 25 Pa. Code § 127.204 (relating to emissions subject to this subchapter); 25 Pa. Code § 127.206 (relating to ERC general requirements); 25 Pa. Code § 127.211 (relating to applicability determination); and 25 Pa. Code § 127.213 (relating to construction and demolition).

§ 127.206. ERC general requirements.

(a) Emissions reductions or ERCs banked prior to January 1, 1991, may not be used as ERCs for emission offsets or netting purposes.

(b) The EQB may, by regulation and upon notice in the *Pennsylvania Bulletin* and opportunity for public comment, proportionally reduce the quantity of registered ERCs not previously included in a plan approval, or may halt transfer activity, in a nonattainment area or throughout this Commonwealth only as necessary when the other measures required by the Clean Air Act and the act may fail to achieve NAAQS or SIP requirements.

(c) ERCs shall be proportionally reduced prior to use in a plan approval in an amount equal to the reductions that the generating facility is or would have been required to make in order to comply with new requirements promulgated by the Department or the EPA, which apply to the generating facility after the ERCs were created.

(d) The Department may issue a plan approval for the construction of a new or modified facility which satisfies the offset requirements specified in § 127.205(3) and (4) (relating to special permit requirements) under the following conditions:

(1) The application for a plan approval demonstrates that the proposed facility either has or will secure the appropriate ERCs which are suitable for use at the specific facility. The ERCs shall be identified in a Department approved and Federally enforceable permit condition for the ERC generating source. The permit condition will provide that the ERCs are properly generated, certified by the Department and processed through the registry no later than the date approved by the Department for commencement of operation of the proposed new or modified facility.

(2) The owner or operator of the proposed new or modified facility may not commence operation or increase emissions until the required emissions reductions are certified and registered by the Department.

(e) ERCs generated by the over control of emissions by an existing facility will not expire for use as offsets. The use of these ERCs in applicability determinations for netting purposes is limited to the period specified in § 127.203a(a)(1) (relating to applicability determination).

(f) ERCs generated by the curtailment or shutdown of a facility which are not included in a plan approval and used as offsets will expire for use as offsets 10 years after the date the facility ceased emitting the ERC generating emissions. The use of these ERCs in applicability determinations for netting purposes is limited to the period specified in § 127.203a(a)(1).

(g) The expiration date of ERCs may not extend beyond the 10-year period allowed by subsection (f), if the ERCs are included in a plan approval but are not used and are subsequently reentered in the registry.

(h) ERCs which are included in a plan approval issued by the Department for a new or modified facility which is never operated may be reentered in the registry if the ERCs are no longer required by the plan approval. Applicable discounts in subsections (b) and (c) shall be applied when the ERCs are reentered in the registry.

(i) ERCs may not be used to achieve compliance with RACT, MACT, BAT, NSPS, BACT, LAER or other emissions limitations required by the Clean Air Act or the act.

(j) ERCs may not be entered into the ERC registry until the emissions reduction generating the ERCs has been certified by the Department in accordance with the criteria for ERC generation and creation contained in § 127.207 (relating to creditable emissions decrease or ERC generation and creation).

(k) A major facility which, due to reductions in the maximum allowable emissions rates, including reductions made to generate ERCs, no longer meets the criteria in § 127.203 (relating to facilities subject to special permit requirements) will continue to be treated as a major facility.

(l) ERCs may not be traded to facilities under different ownership until the emissions reduction generating the ERCs is made Federally enforceable.

(m) ERCs may not be created for an emissions reduction previously used in an applicability determination for netting purposes nor for an emissions decrease used to create an alternative emissions limitation.

(n) ERCs transferred from one facility to another may not be transferred to a third party, unless the transfer of the ERCs is processed by the Department through the ERC registry system.

(o) Except as provided under § 127.210 (relating to offset ratios), an ERC created for a regulated criteria pollutant shall only be used for offsetting or netting an emissions increase involving the same criteria pollutant unless approved in writing by the Department and the EPA.

(p) The owner or operator of a source or facility which has registered ERCs with the Department may not exceed the emissions limitation or violate other permit conditions established in generating the ERCs.

(q) ERCs may not be generated for emissions in excess of those previously identified in required emission statements and for which applicable emission fees have been paid.

(r) Emission reductions occurring at a facility after April 5, 2005, but prior to September 3, 2011, may be used to generate ERCs in accordance with this subchapter, if a complete ERC registry application is submitted to the Department by September 3, 2012.

Source

The provisions of this § 127.206 amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2365; amended September 2, 2011, effective September 3, 2011, 41 Pa.B. 4761. Immediately preceding text appears at serial pages (327823) to (327825).

Cross References

This section cited in 25 Pa. Code § 127.201 (relating to general requirements); 25 Pa. Code § 127.207 (relating to creditable emissions decrease or ERC generation and creation); 25 Pa. Code § 127.208 (relating to ERC use and transfer requirements); and 25 Pa. Code § 127.209 (relating to ERC registry system).

§ 127.207. Creditable emissions decrease or ERC generation and creation.

A creditable emissions decrease or ERC generation and creation may occur under the following conditions:

(1) A creditable emissions decrease or ERC shall be surplus, permanent, quantified and Federally enforceable as follows:

(i) *Surplus*. A creditable emissions decrease or ERC shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emissions limitation or compliance plans. Emissions reductions necessary to meet NSPS, LAER, RACT, BAT, BACT, allowance-based programs and permit or plan approval

emissions limitations or other emissions limitations required by the Clean Air Act or the act may not be used to generate ERCs or a creditable emissions decrease.

(ii) *Permanent*. A creditable emissions decrease or ERC generated from emissions reductions which are Federally enforceable through an operating permit or a revision to the SIP and assured for the life of the corresponding increase, whether unlimited or limited in duration, are considered permanent. Emissions limitations and other restrictions imposed on a permit as a result of a creditable emissions decrease or ERC generation shall be carried over into each successive permit issued to that facility. MERCs and other ERCs generated pursuant to an approved economic incentive program shall be permanent within the time frame specified by the program.

(iii) *Quantified*. A creditable emissions decrease or ERC shall be quantified in a credible, workable and replicable method consistent with procedures promulgated by the Department and the EPA.

(iv) *Enforceable*. A creditable emissions decrease or ERC shall be Federally enforceable emissions reductions, regulated by Federal or SIP emissions limitations, such as a limit on potential to emit in the permit, and be generated from a plan approval, economic incentive program or permit limitation.

(2) Except as provided in § 127.206(r) (relating to ERC general requirements), an ERC registry application shall be submitted to the Department within 2 years of the initiation of an emissions reduction used to generate ERCs. For deactivated sources or facilities the following also apply:

(i) The owner or operator of an ERC-generating source or facility shall submit a written notice to the Department within 1 year after the deactivation of a source or facility to request preservation of the emissions in the inventory.

(ii) Within 2 years after ERC-generating emission reductions are initiated, the owner or operator of a source or facility that is covered under a maintenance plan submitted to the Department in accordance with § 127.11a or § 127.215 (relating to reactivation of sources; and reactivation) may permanently deactivate the source or facility and submit an ERC registry application to the Department if the emissions are preserved in the inventory.

(3) An ERC registry application must include the following information:

(i) The name of the owner and operator of the source or facility.

(ii) The intended use of the ERCs, including information as to whether the ERCs are to be used for netting, internal offsetting or trading purposes.

(iii) The intended or actual date of initiation of emission reductions.

(iv) A description of the emission reduction techniques used to generate the ERCs.

(v) Full characterization of the emissions reductions using a protocol approved by the Department, including the following:

(358268) No. 444 Nov. 11

(A) Requirements and methods specified by EPA emission regulations and trading policies.

(B) Information concerning tests and related emission quantification methods specified in Chapter 139 (relating to sampling and testing) and other Department and EPA approved test methods and sampling procedures.

(C) The amounts, rates, hours, seasonal variations, annual emission profile and other data necessary to determine the ambient impact of the emissions.

(D) Compliance and verification methods.

(vi) Other information required by the Department to properly certify the ERCs.

(vii) For an ERC generating source or facility located outside of this Commonwealth, the name of the Pennsylvania agent authorized to accept service of process, and a statement that the applicant accepts the jurisdiction of this Commonwealth for purposes of regulating the ERCs registered with the Department.

(4) In establishing the baseline used to calculate a creditable emissions decrease or ERC, the Department will consider emission characteristics and operating conditions which include, at a minimum, the emission rate, capacity utilization, hours of operations and seasonal emission rate variations, in accordance with the following:

(i) The baseline emissions rate will be determined as follows:

(A) The average actual emissions or allowable emissions, whichever is lower, shall be calculated over the 2 calendar years immediately preceding the emissions reduction which generates the creditable emissions decrease or ERC.

(B) When the Department determines that the 2-year period immediately preceding the emissions reduction is not representative of the normal emission rates or characteristics of the existing facility, the Department may specify a different 2-year period if that period of time or other conditions are representative of normal operations occurring within the preceding 5 calendar years. If the existing facility has been in operation for fewer than 2 years, the Department will determine the baseline emissions rate based on a shorter representative period when the facility was in operation.

(ii) The baseline emissions rate may not exceed the emissions in the emission statements required by Chapter 135 (relating to reporting of sources), for which fees have been paid.

(iii) The baseline emissions rate will not exceed the allowable emissions rate including RACT requirements in force at the time the ERC registry application is submitted. The allowable emissions rate will be based on the emissions limitation in this article or a permit limitation or another more stringent emissions limitation required by the Clean Air Act or the act,

whichever is more restrictive. The Department will consider only complete applications and will apply the requirements in effect at that time in determining the emission reduction achieved.

(5) Acceptable emissions reduction techniques, which an applicant may use to generate ERCs, are limited to the following:

(i) Shutdown of an existing facility occurring after January 1, 1991, pursuant to the issuance of a new permit or permit modification which is not otherwise required to comply with the Clean Air Act or the act.

(ii) Permanent curtailment in production or operating hours of an existing facility operating in accordance with a new permit or a permit modification if the curtailment results in an actual emissions reduction and is not otherwise required to comply with the Clean Air Act or the act.

(iii) Improved control measures, including improved control of fugitive emissions, which decrease the actual emissions from an existing facility to less than that required by the most stringent emissions limitation required by the Clean Air Act or the act and which is reflected in a new permit or a permit modification.

(iv) New technology and materials or new process equipment modifications which are not otherwise required by the Clean Air Act or the act.

(v) The incidental emissions reduction of nonhazardous air pollutants resulting from statutorily required reductions of hazardous air pollutants, or the emissions reduction of nonhazardous air pollutants which are incidental to the excess early emissions reduction of hazardous air pollutants listed in section 112(b)(1) of the Clean Air Act (42 U.S.C.A. § 7412(b)(1)), if the reduction meets the other requirements of this section.

(vi) Notwithstanding the requirements in paragraph (2), a MERC program, airport emission reduction credits program or another Economic Incentive Program which meets the requirements of this subchapter and which is approved by the EPA as a SIP revision.

(A) The program shall comply with the following requirements:

(I) The program shall be consistent with the Clean Air Act and the act.

(II) ERCs shall be quantifiable and enforceable at both the Federal and State levels.

(III) ERCs shall be consistent with SIP attainment and RFP demonstrations.

(IV) ERCs shall be surplus to emissions reductions achieved under other Federal and State regulations relied upon in an applicable attainment plan or demonstration or credited in an RFP or milestone demonstration.

(V) ERCs shall be permanent within the time frame specified by the program.

(B) The program shall contain the following elements:

(I) A clearly defined purpose and goals and an incentive mechanism that can rationally be related to accomplishing the goals.

(II) A clearly defined scope, which identifies affected sources and assures that the program will not interfere with other applicable regulatory requirements.

(III) A program baseline from which projected program results, including quantifiable emission reductions, can be determined.

(IV) Credible, workable and replicable procedures for quantifying emissions or emission-related parameters.

(V) Source requirements, including those for monitoring, recordkeeping and reporting, that are consistent with specified quantification procedures and allow for compliance certification and enforcement.

(VI) Projected program results and methods for accounting for compliance and program uncertainty.

(VII) An implementation schedule, administrative system and enforcement provisions adequate for ensuring Federal and State enforceability of the program.

(VIII) Audit procedures to evaluate program implementation and track results.

(IX) Reconciliation procedures to trigger corrective or contingency measures to make up a shortfall between the projected emissions reduction and the emissions reduction actually achieved.

(6) Methods for initial quantification of ERCs and verification of the required emissions reduction include the following:

(i) The use of existing continuous emission monitoring data, operational records and other documentation which provide sufficient information to quantify and verify the required emissions reduction.

(ii) For a facility which does not have Department approved data collection or quantification procedures to characterize the emissions, the use of prereduction and postreduction emission tests. Emission tests used to establish emission data shall be conducted in accordance with the requirements and procedures specified in 40 CFR Part 51, Appendix S (relating to emission offset interpretive ruling) and Chapter 139 (relating to sampling and testing), and other applicable Federal and state requirements.

(iii) For facilities for which emissions rates vary over time, a Department approved alternative method for quantifying the reduction and ensuring the continued emissions reduction, if the method is approved by the EPA.

(7) The reduced emissions limitation of the new or modified permit of the source or facility generating the creditable emissions decrease or ERC shall be continuously verified by Department, local air pollution control agency or other State approved compliance monitoring and reporting programs. Onsite inspections will be made to verify shutdowns. If equipment has not been dismantled

or removed, the owner or operator shall on an annual basis certify in writing to the Department the continuance of the shutdown.

Source

The provisions of this § 127.207 amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2365. Immediately preceding text appears at serial pages (221977) to (221981).

Cross References

This section cited in 25 Pa. Code § 121.1 (relating to definitions); 25 Pa. Code § 127.201 (relating to general requirements); 25 Pa. Code § 127.203 (relating to facilities subject to special permit requirements); 25 Pa. Code § 127.203a (relating to applicability determination); 25 Pa. Code § 127.204 (relating to emissions subject to this subchapter); 25 Pa. Code § 127.206 (relating to ERC general requirements); 25 Pa. Code § 127.209 (relating to ERC registry system); 25 Pa. Code § 127.211 (relating to applicability determination); and 25 Pa. Code § 127.218 (relating to PALs).

§ 127.208. ERC use and transfer requirements.

The use and transfer of ERCs shall meet the following conditions:

(1) The registry system established by § 127.209 (relating to ERC registry system) shall be used to transfer ERCs, with the Department's approval, directly from an existing source or facility where the ERCs were generated to the proposed facility.

(2) The transferee shall secure approval to use the offsetting ERCs through a plan approval or an operating permit, which indicates the Department's approval of the ERC transfer and use. Upon the issuance of a plan approval or an operating permit, the ERCs are no longer subject to expiration under § 127.206(f) (relating to ERC general requirements) except as specified in § 127.206(g).

(3) For the pollutants regulated under this subchapter, the facility shall demonstrate to the satisfaction of the Department that the ERCs proposed for use as offsets will provide, at a minimum, ambient impact equivalence to the extent equivalence can be determined and that the use of the ERCs will not interfere with the overall control strategy of the SIP.

(4) ERCs shall include the same conditions, limitations and characteristics, including seasonal and other temporal variations in emission rate and quality, as well as the maximum allowable emission rates the emissions would have had if emitted by the generator, unless equivalent ambient impact is assured through other means.

(5) ERCs may be obtained from or traded in another state, which has reciprocity with the Commonwealth for the trading and use of ERCs, only upon the approval of both the Commonwealth and the other state through SIP approved rules and procedures, including an EPA approved SIP revision. ERCs generated in another state may not be traded into or used at a facility within this Commonwealth unless the ERC generating facility's ERCs are enforceable by the Department.

(6) ERCs may not be transferred to and used in an area with a higher nonattainment classification than the one in which they were generated.

(7) A facility proposing new or increased emissions shall demonstrate that sufficient offsetting ERCs at the ratio specified in § 127.210 (relating to offset ratios) have been acquired from within the nonattainment area of the proposed facility.

(8) If the facility proposing new or increased emissions demonstrates that ERCs are not available in the nonattainment area where the facility is located, ERCs may be obtained from another nonattainment area if the other nonattainment area has an equal or higher classification and if the emissions from the other nonattainment area contribute to an NAAQS violation in the nonattainment area of the proposed facility. In addition, the requirements of paragraph (3) shall be satisfied.

(9) For the purpose of emissions offset transfers at VOC or NOx facilities, the areas included within an ozone transport region established under section 184 of the Clean Air Act (42 U.S.C.A. § 7511c), which are designated in 40 CFR 81.339 (relating to Pennsylvania) as attainment, nonattainment or unclassifiable areas for ozone, shall be treated as a single nonattainment area.

(10) An owner or operator of a facility shall acquire ERCs for use as offsets from an ERC generating facility located within the same nonattainment area.

(11) An owner or operator of a facility shall acquire ERCs for use as offsets from an ERC generating facility located within the same nonattainment area, except that the Department may allow the owner or operator to obtain ERCs generated in another nonattainment area if the following exist:

(i) The other area has an equal or higher nonattainment classification than the area in which the facility is located.

(ii) Emissions from the other area contribute to a violation of the NAAQS in the nonattainment area in which the facility is located.

(12) An owner or operator of a facility that is subject to allowance-based programs in this article may generate, create, transfer and use ERCs in accordance with this subchapter and applicable provisions in Chapter 145 (relating to interstate pollution transport reduction).

Source

The provisions of this § 127.208 amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2365. Immediately preceding text appears at serial pages (221981) to (221982) and (289919).

Notes of Decisions

Agency Interpretation

Because the Department of Environmental Protection is more likely to develop expertise in assessing the effect of regulatory interpretations than the Environmental Hearing Board, it is presumed that the General Assembly intended to invest the Department, and not the EHB, with authoritative interpretive powers. *Department of Environmental Protection v. North American Refractories Co.*, 791 A.2d 461 (Pa. Cmwlth. 2002).

Commencement of Time

Although the interpretation of § 127.207(2) (relating to ERC generation and creation) that the commencement of the 1-year period for emissions begins to run at the initiation of emissions reduction rather that at the time the operator makes the decision to reduce emissions is reasonable, it was error not to consider whether that section is invalid because it is more stringent than Federal law. *Department of Environmental Protection v. North American Refractories Co.*, 791 A.2d 461 (Pa. Cmwlth. 2002).

Cross References

This section cited in 25 Pa. Code § 127.201 (relating to general requirements); and 25 Pa. Code § 127.209 (relating to ERC registry system).

§ 127.209. ERC registry system.

(a) The Department will establish an ERC registry system to track ERCs which have been created, transferred and used in accordance with the requirements of this subchapter. Prior to registration of the ERCs, the Department will review and approve the ERC registry application to verify compliance with this subchapter. Registration of the ERCs in the registry system will constitute certification that the ERCs satisfy the requirements of this subchapter and are available for use.

(b) The Department will maintain supporting documentation, including plan approval or permit decisions, registry applications and other items required to sufficiently characterize the emissions, which will allow the Department and potential users to determine if the ERCs are suitable for use at a specific facility.

(c) As part of the NSR process, the Department will provide the EPA and the public with notice of a plan approval or operating permit proposing to use ERCs.

(d) The Department will process each ERC registry application, permit modification and plan approval application, including those involving netting transactions, through the registry system to verify the information and to ensure that the requirements of §§ 127.206—127.208 (relating to ERC general requirements; creditable emissions decrease or ERC generation and creation; and ERC use and transfer requirements) have been met, including the requirement that the required reductions have been made and certified before registry entries or changes are made.

(e) Registry operations and procedures are as follows:

(1) The registry will list the ERCs, and the Department will publish revisions to the list of registered ERCs available for trading purposes in the *Pennsylvania Bulletin* on a quarterly basis.

(2) The registry will list ERCs by criteria pollutants and identify the nonattainment areas in which the ERCs were generated. The registry will identify ERCs that are available for use and that are in use.

(3) The ERC creation date entered in the registry will reflect the anticipated date of emissions reduction and will be amended as necessary to reflect the actual emissions reduction date.

(4) Upon issuance of a plan approval or operating permit allowing the use of ERCs entered in the registry, the following registry transactions will occur:

(i) The registry will identify the remaining ERCs available for use, if any, after the transaction. The ERC expiration date will be included for ERCs generated under § 127.207(5)(i) and (ii).

(ii) The registry will indicate the effective date, the quantity of ERCs used, the originating generator and the ERC creation date, which is the date of actual or anticipated emissions reduction by the ERC generating facility.

Source

The provisions of this § 127.209 amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2365. Immediately preceding text appears at serial pages (289919) to (289920).

Cross References

This section cited in 25 Pa. Code § 127.201 (relating to general requirements); and 25 Pa. Code § 127.208 (relating to ERC use and transfer requirements).

§ 127.210. Offset ratios.

(a) The emissions offset ratios for NSR purposes and ERC transactions subject to the requirements of this subchapter must be in an amount equal to or greater than the ratios specified in the following table:

Required Emission Offsets For Existing Sources, Expressed in Tons per Year

Pollutant/Area	*Flue Emissions*	*Fugitive Emissions*
PM-10 and SO_x	1.3:1	5:1
Volatile Organic Compounds		
Ozone Classification Areas		
Severe Areas	1.3:1	1.3:1
Serious Areas	1.2:1	1.3:1
Moderate Areas	1.15:1	1.3:1
Marginal/Incomplete Data Areas	1.15:1	1.3:1
Transport Region	1.15:1	1.3:1
NO_x		
Ozone Classification Areas		
Severe Areas	1.3:1	1.3:1
Serious Areas	1.2:1	1.2:1
Moderate Areas	1.15:1	1.15:1
Marginal/Incomplete Data Areas	1.15:1	1.15:1
Transport Region	1.15:1	1.15:1
Carbon Monoxide		
Primary Nonattainment Areas	1.1:1	1.1:1
Lead	1.1:1	1.1:1
$PM_{2.5}$		
$PM_{2.5}$ Nonattainment Area		
$PM_{2.5}$	1:1	1:1
$PM_{2.5}$ Precursors		
SO_2	1:1	1:1
NO_x	1:1	1:1
VOCs	1:1	1:1
Ammonia	1:1	1:1

(b) In complying with the emissions offset requirements of this subchapter, the emission offsets obtained shall be of the same NSR regulated pollutant unless interpollutant offsetting is authorized for a particular pollutant in accordance with subsection (c).

(c) The Department may, based on a technical assessment, establish interpollutant trading ratios for offsetting $PM_{2.5}$ emissions or $PM_{2.5}$ precursor emissions in a specific nonattainment area or geographic area in this Commonwealth. The interpollutant trading ratios shall be subject to public review and comment for at least 30 days prior to submission to the EPA for approval as a SIP revision.

(d) If the EPA promulgates $PM_{2.5}$ interpollutant trading ratios in 40 CFR Part 51 (relating to requirements for preparation, adoption, and submittal of implementation plans), the ratios will be adopted and incorporated by reference.

Authority

The provisions of this § 127.210 amended under section 5(a)(1) and (8) of the Air Pollution Control Act (35 P.S. § 4005(a)(1) and (8)).

Source

The provisions of this § 127.210 amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2365; amended September 2, 2011, effective September 3, 2011, 41 Pa.B. 4761; amended December 20, 2019, effective December 21, 2019, 49 Pa.B. 7404. Immediately preceding text appears at serial pages (358275) to (358276).

Cross References

This section cited in 25 Pa. Code § 127.201 (relating to general requirements); 25 Pa. Code § 127.205 (relating to special permit requirements); 25 Pa. Code § 127.206 (relating to ERC general requirements); 25 Pa. Code § 127.208 (relating to ERC use and transfer requirements); and 25 Pa. Code § 127.211 (relating to applicability determination).

§ 127.211. [Reserved].

Source

The provisions of this § 127.212 reserved May 18, 2007, effective May 19, 2007, 37 Pa.B. 2365. Immediately preceding text appears at serial pages (289921) and (221985) to (221988).

§ 127.212. Portable facilities.

(a) An owner or operator of a portable SOx, PM-10, lead or CO facility subject to this subchapter which will be relocated within 6 months of the commencement of operation to a location within an attainment area which does not have an impact on a nonattainment area at or above the significance levels contained in § 127.203 (relating to facilities subject to special permit requirements) shall be exempt from this subchapter. An owner or operator of a facility which subsequently returns to a location where it is subject to this subchapter shall comply with this subchapter.

(b) An owner or operator of a portable VOC or NOx facility subject to this subchapter which will be relocated outside of this Commonwealth within 6 months of the commencement of operation shall be exempt from this subchapter. An owner or operator of a facility which subsequently returns to a location in this Commonwealth where it is subject to this subchapter shall comply with this subchapter.

Source

The provisions of this § 127.212 amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2365. Immediately preceding text appears at serial page (221988).

§ 127.213. Construction and demolition.

(a) Emissions from construction or demolition activities will be exempt from § 127.205 (relating to special permit requirements) if BACT is used during the construction or demolition period.

(b) Emissions from construction and demolition activities may not be considered under § 127.203a (relating to applicability determination).

Source

The provisions of this § 127.213 amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2365. Immediately preceding text appears at serial page (221988).

§ 127.214. [Reserved].

Source

The provisions of this § 127.214 amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2365. Immediately preceding text appears at serial pages (221988) to (221989).

§ 127.215. Reactivation.

(a) A facility which has been out of operation or production for 1 year or more during the term of its operating permit may be reactivated within the term of its operating permit and will not be considered a new facility subject to this subchapter if the following conditions are satisfied:

(1) The permittee shall within 1 year of the deactivation submit in writing to the Department and implement a maintenance plan which includes the measures to be taken, including maintenance, upkeep, repair or rehabilitation procedures, which will enable the facility to be reactivated in accordance with the terms of the permit.

(2) The permittee shall submit a reactivation plan at least 30 days prior to the proposed date of reactivation. The reactivation plan shall include sufficient measures to ensure that the facility will be reactivated in compliance with the permit requirements. The permittee may submit a reactivation plan to the Department at any time during the term of its operating permit. The reactivation plan may also be submitted to and approved in writing by the Department as part of the plan approval or permit application process.

(3) The permittee shall notify the Department in writing within 1 year of deactivation requesting preservation of the emissions in the inventory and indicating the intent to reactivate the facility.

(4) The permittee shall comply with the terms and conditions of the following:

(i) Maintenance plan while the facility is deactivated.

(ii) Reactivation plan and the operating permit upon reactivation.

(5) The permittee with an approved reactivation plan shall notify the Department in writing at least 30 days prior to reactivation of the facility.

(b) The Department will approve or disapprove in writing the complete reactivation plan within 30 days of plan submission, unless additional time is required based on the size or complexity of the facility.

(c) For a facility which is deactivated in accordance with subsection (a), ERCs may be created only if an ERC registry application is filed within 2 years of deactivation.

Source

The provisions of this § 127.215 amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2365. Immediately preceding text appears at serial pages (221989) to (221990).

Cross References

This section cited in 25 Pa. Code § 127.11 (relating to plan approval requirements); 25 Pa. Code § 127.11a (relating to reactivation of sources); 25 Pa. Code § 127.13 (relating to extensions); 25 Pa. Code § 127.203 (relating to facilities subject to special permit requirements); 25 Pa. Code § 127.207 (relating to creditable emissions decrease or ERC generation and creation); and 25 Pa. Code § 127.211 (relating to applicability determination).

§ 127.216. Circumvention.

Regardless of the exemptions provided in this subchapter, an owner or other person may not circumvent this subchapter by causing or allowing a pattern of ownership or development, including the phasing, staging, delaying or engaging in incremental construction, over a geographic area of a facility which, except for the pattern of ownership or development, would otherwise require a permit or submission of a plan approval application.

§ 127.217. Clean Air Act Titles III—V applicability.

Compliance with this subchapter does not relieve a source or facility from complying with Titles III—V of the Clean Air Act (42 U.S.C.A. §§ 7601—7627; 7641, 7642, 7651—7651o; and 7661—7661f), applicable requirements of the act or regulations adopted under the act.

Source

The provisions of this § 127.217 amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2365. Immediately preceding text appears at serial page (221990).

§ 127.218. PALs.

(a) The following provisions govern an actual PAL for a major facility:

(1) The Department may approve the use of an actual PAL for any existing major facility if the PAL meets the requirements in this subsection and subsections (b)—(n).

(2) The Department will not permit an actual PAL for VOC or NOx for a major facility located in an extreme ozone nonattainment area.

(3) A physical change in or change in the method of operation of a major facility that maintains its total facility-wide emissions below the PAL level, meets the requirements in this subsection and subsections (b)—(n) and complies with the PAL permit is not:

(i) A major modification for the PAL pollutant.

(ii) Subject to this subchapter.

(iii) Subject to § 127.203(e)(2) (relating to facilities subject to special permit requirements).

(4) An owner or operator of a major facility shall continue to comply with applicable Federal or State requirements, emissions limitations and work practice requirements that were established prior to the PAL effective date.

(b) The owner or operator of a major facility shall submit the following information to the Department as part of the PAL application:

(1) A list of the emissions units at the facility designated as small, significant or major based on their potential to emit. The list must indicate which Federal or State applicable requirements, emissions limitations or work practices apply to each unit.

(2) Calculations and supporting documentation for the baseline actual emissions, which include emissions associated with operation of the unit, startups and shutdowns.

(3) The calculation procedures that the owner or operator of the major facility proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subsection (m)(1).

(c) The Department may establish a PAL if the following requirements are met:

(1) The PAL shall impose an annual emissions limitation in TPY for the entire major facility. For each month during the PAL effective period after the first 12 months of establishing a PAL, the owner or operator of the major facility shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months, expressed as a 12-month rolling total, is less than the PAL. For each month during the first 11 months from the PAL effective date, the owner or operator of the major facility shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(2) The PAL shall be established in a PAL permit that meets the public participation requirements in subsection (e).

(3) The PAL permit shall contain the requirements of subsection (g).

(4) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major facility.

(5) Each PAL shall regulate emissions of only one pollutant.

(6) Each PAL shall have a PAL effective period of 10 years.

(7) The owner or operator of a major facility issued a PAL permit shall comply with the monitoring, recordkeeping and reporting requirements provided in subsections (m)—(o) for each emissions unit under the PAL through the PAL effective period.

(d) At no time during or after the PAL effective period are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under this subchapter unless the level of the PAL is reduced by the amount of the emissions reductions and the reductions would be creditable in the absence of the PAL.

(e) A PAL for an existing major facility must be established or modified in accordance with the public notice procedures under §§ 127.44, 127.424 and 127.521 (relating to public notice; public notice; and additional public participation provisions).

(f) Setting the 10-year actual PAL level must comply with the following:

(1) The actual PAL level for a major facility must be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at

the facility plus an amount equal to the applicable emissions rate that is significant for the PAL pollutant or under the Clean Air Act, whichever is lower.

(2) When establishing the actual PAL level, for a PAL pollutant, one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant.

(3) Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level.

(4) For newly constructed emission units, which do not include modifications to existing units, on which actual construction began after the 24-month period, instead of adding the baseline actual emissions as specified in this paragraph, the emissions must be added to the PAL level in an amount equal to the potential to emit of the emission units.

(5) The Department will specify a reduced PAL level in TPY in the PAL permit to become effective on the future compliance date of any applicable Federal or State regulatory requirement that the Department is aware of prior to issuance of the PAL permit.

(g) At a minimum, the PAL permit must contain the following information:

(1) The PAL pollutant and the applicable facility-wide emissions limitation in TPY.

(2) The effective date and the expiration date.

(3) A requirement that if the owner or operator of a major facility applies to renew a PAL in accordance with subsection (k) before the end of the PAL effective period, the PAL permit does not expire at the end of the PAL effective period. The PAL permit remains in effect until the Department issues a revised PAL permit.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(5) A requirement that, upon expiration of the PAL permit, the owner or operator of a major facility is subject to the requirements of subsection (j).

(6) The calculation procedures that the owner or operator of a major facility shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subsection (n)(1).

(7) A requirement that the owner or operator of a major facility monitor all emissions units in accordance with subsection (m).

(8) A requirement that the owner or operator retain the records required under subsection (n) and that they be retrievable onsite.

(9) A requirement that the owner or operator submit the reports required under subsection (o) by the required deadlines.

(10) A requirement that the emissions from a new source that requires a plan approval shall be the minimum attainable through the use of BAT. A physical change or change in method of operation at an existing emissions unit will not

be subject to BAT requirements of this chapter unless the emissions unit is modified so that the fixed capital cost of new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new emissions unit.

(11) Other requirements the Department deems necessary to implement and enforce the PAL.

(h) The Department will specify a PAL effective period of 10 years.

(i) The following requirements apply to reopening of the PAL permit:

(1) During the PAL effective period, the Department will reopen the PAL permit to:

(i) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL.

(ii) Reduce the PAL if the owner or operator of the major facility creates creditable emissions reductions for use as offsets under § 127.207 (relating to creditable emissions decrease or ERC generation or creation).

(iii) Revise the PAL to reflect an increase in the PAL as provided under subsection (l).

(2) The Department may reopen the PAL permit to reduce the PAL:

(i) To reflect newly applicable Federal requirements with compliance dates after the PAL effective date.

(ii) Consistent with a requirement that is enforceable as a practical matter and that the Department may impose on the major facility consistent with all applicable requirements.

(iii) If the Department determines that a reduction is necessary to avoid causing or contributing to:

(A) A NAAQS or PSD increment violation.

(B) An adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal land manager and for which information is available to the general public.

(3) Except for the permit reopening paragraph (1)(i) for the correction of typographical/calculation errors that do not increase the PAL level, other reopening shall be carried out in accordance with the public participation requirements of subsection (e).

(j) A PAL permit which is not renewed in accordance with the procedures in subsection (k) expires at the end of the PAL effective period and the following requirements apply:

(1) The owner or operator of each emissions unit or each group of emissions units that existed under the PAL shall comply with an allowable emissions limitation under a revised permit established according to the following procedures:

(i) Within the time frame specified for PAL permit renewals in subsection (k)(2), the owner or operator of the major facility shall submit a proposed allowable emissions limitation for each emissions unit, or each group

of emissions units if this distribution of allowable emissions is more appropriate as determined by the Department, by distributing the PAL allowable emissions for the major facility among each of the emissions units that existed under the PAL permit. If the PAL permit has not been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (k)(5), this distribution is made as if the PAL permit has been adjusted.

(ii) The Department will decide whether and how to distribute the PAL allowable emissions and issue a revised PAL permit incorporating allowable limits for each emissions unit or each group of emissions units.

(2) The owner or operator of each emissions unit or group of emissions units shall comply with the allowable emissions limitation on a 12-month rolling basis. The Department may approve the use of emissions monitoring systems other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emissions limitation.

(3) Until the Department issues the revised PAL permit incorporating the allowable limits for each emissions unit or group of emissions units required under paragraph (1)(i), the owner or operator of the facility shall continue to comply with a facility-wide, multi-unit emissions cap equivalent to the level of the PAL emissions limitation.

(4) A physical change or change in the method of operation at the major facility is subject to this subchapter if the change meets the definition of major modification.

(5) The owner or operator of the major facility shall continue to comply with any State or Federal applicable requirements including BAT, BACT, RACT or NSPS that may have applied either during the PAL effective period or prior to the PAL effective period except for those emissions limitations that had been established under § 127.203(e)(2), but were eliminated by the PAL in accordance with the provisions in subsection (a)(3)(iii).

(k) The following requirements apply to renewal of a PAL:

(1) The Department will follow the procedures specified in subsection (e) in approving a request to renew a PAL permit for a major facility, and will provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment in accordance with the applicable public notice requirements in §§ 127.44, 127.424 and 127.521. During the public review, a person may propose a PAL level for the major facility for consideration by the Department.

(2) An owner or operator of a major facility shall submit a timely application to the Department to request renewal of a PAL permit. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months prior to the date of permit expiration. If the owner or operator of a

major facility submits a complete application to renew the PAL permit within this time period, the PAL continues to be effective until the revised permit with the renewed PAL is issued.

(3) The application to renew a PAL permit must contain the following information:

(i) The information required in subsection (b)(1)—(3).

(ii) A proposed PAL level.

(iii) The sum of the potentials to emit of the emissions units under the PAL.

(iv) Other information the owner or operator wishes the Department to consider in determining the appropriate level at which to renew the PAL.

(4) The Department will consider the options in subparagraphs (i) and (ii) in determining whether and how to adjust the PAL. In no case may the adjustment fail to comply with subparagraphs (iii) and (iv).

(i) If the emissions level calculated in accordance with subsection (f) is equal to or greater than 80% of the PAL level, the Department may renew the PAL at the same level without considering the factors set forth in subparagraph (ii).

(ii) The Department may set the PAL at a level that it determines to be more representative of the facility's baseline actual emissions or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the facility's voluntary emissions reductions or other factors specifically identified by the Department in its written rationale.

(iii) If the potential to emit of the major facility is less than the PAL, the Department will adjust the PAL to a level no greater than the potential to emit of the facility.

(iv) The Department will not approve a renewed PAL level higher than the current PAL unless the major facility has complied with subsection (l).

(5) If the compliance date for a State or Federal requirement that applies to the facility occurs during the PAL effective period and the Department has not already adjusted for this requirement, the PAL must be adjusted at the time of the PAL permit renewal or Title V permit renewal, whichever occurs first.

(l) The following requirements apply to increasing a PAL during the PAL effective period:

(1) The Department may increase a PAL emissions limitation during the PAL effective period if the owner or operator of the major facility complies with the following:

(i) The owner or operator of the major facility shall submit a complete application to request an increase in the PAL limit for a PAL major modification. The application must identify the emissions units contributing to the increase in emissions that cause the major facility's emissions to equal or exceed its PAL.

(ii) The owner or operator of the major facility shall demonstrate that the sum of the baseline actual emissions of the small emissions units assuming application of BAT, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BAT or BACT equivalent controls on each small emissions unit, significant emissions unit or major emissions unit must be determined by conducting a new BAT or BACT analysis at the time the application is submitted unless the emissions unit is currently required to comply with a BAT, BACT or LAER requirement that was established within the preceding 10 years. In this case, the assumed control level for that emissions unit is equal to the level of BAT, BACT or LAER with which that emissions unit must currently comply.

(iii) The owner or operator of the major facility shall obtain a major NSR permit for all emissions units identified in subparagraph (i), regardless of the magnitude of the emissions increase resulting from them. The owner or operator of these emissions units shall comply with the applicable emissions requirements of this subchapter, even if the units are subject to a PAL or continue to be subject to a PAL.

(iv) The PAL permit must require that the increased PAL level be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(2) The Department will calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls determined in accordance with paragraph (1)(ii), plus the sum of the baseline actual emissions of the small emissions units.

(3) The PAL permit must be revised to reflect the increased PAL level under the public notice requirements of subsection (e).

(m) The following monitoring requirements apply to an owner or operator subject to a PAL:

(1) Each PAL permit must contain enforceable requirements for the monitoring system to accurately determine plantwide emissions of the PAL pollutant in terms of mass per unit of time.

(2) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements in paragraph (5) and must be approved in writing by the Department.

(3) The owner or operator of the facility may also use an alternative monitoring approach that meets the requirements of paragraph (1), if approved in writing by the Department.

(4) Failure to use a monitoring system that meets the requirements of this section renders the PAL permit invalid.

(5) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (6)—(12):

(i) Mass balance calculations for activities using coatings or solvents.

(ii) CEMS.

(iii) CPMS or PEMS.

(iv) Emission factors.

(6) An owner or operator of a major facility using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(i) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit.

(ii) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process.

(iii) If the vendor of a material or fuel used in or at the emissions unit publishes a range of pollutant content from the material, the owner or operator shall use the highest value of the range to calculate the PAL pollutant emissions unless the Department determines, in writing, that there is site-specific data or a site-specific monitoring program to support another content within the range.

(7) An owner or operator of a major facility using a CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(i) The CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B (relating to performance specifications).

(ii) The CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

(8) An owner or operator of a major facility using a CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(i) The CPMS or PEMS must be calibrated based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit.

(ii) Each CPMS or PEMS must sample, analyze and record data at least every 15 minutes or other less frequent interval approved in writing by the Department, while the emissions unit is operating.

(9) An owner or operator of a major facility using emission factors to monitor PAL pollutant emissions shall:

(i) Adjust the emission factors to account for the degree of uncertainty or limitations in the development of the factors.

(ii) Operate the emissions unit within the designated range of use for the emission factor, if applicable.

(iii) Conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Department determines, in writing, that testing is not required.

(10) An owner or operator of a facility shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during a period of time that there is no monitoring data, unless another method for determining emissions during these periods is specified in the PAL permit.

(11) If an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at the operating points of the emissions unit, the Department will, at the time of permit issuance, either:

(i) Establish default values for determining compliance with the PAL permit based on the highest potential emissions reasonably estimated at the operating points.

(ii) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL permit.

(12) Data used to establish the PAL must be revalidated through performance testing or other scientifically valid means approved in writing by the Department. This testing must occur at least once every 5 years after issuance of the PAL permit.

(n) The following requirements apply to recordkeeping:

(1) The PAL permit must require an owner or operator to retain a copy of the records necessary to determine compliance with a requirement of this section and of the PAL, including a determination of the 12-month rolling total emissions for each emissions unit, for 5 years.

(2) The PAL permit must require an owner or operator to retain a copy of the following records for the duration of the PAL effective period and 5 years after the PAL permit expires:

(i) A copy of the PAL permit application and applications for revisions to the PAL permit.

(ii) Each annual certification of compliance required under Title V of the Clean Air Act (42 U.S.C.A. §§ 7661—7661f) and regulations adopted under the act and the data relied on in certifying the compliance.

(o) The following requirements apply to reporting and notification:

(1) The owner or operator of a major facility shall submit semiannual monitoring reports and prompt deviation reports to the Department in accordance with the Title V operating permit requirements of Subchapters F and G (relating to operating permit requirements; and Title V operating permits).

(2) The semiannual reports must:

(i) Be submitted to the Department within 30 days of the end of each reporting period.

(ii) Contain the following information:

(A) The identification of the owner and operator and the permit number.

(B) Total annual emissions in TPY based on a 12-month rolling total for each month in the reporting period recorded in compliance with subsection (n)(1).

(C) Data relied upon, including the quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

(D) A list of the emissions units modified or added to the major facility during the preceding 6-month period.

(E) The number, duration and cause of deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and the corrective action taken.

(F) A notification of a shutdown of a monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by the method included in the permit under subsection (m)(10).

(G) A statement signed by a responsible official of the company that owns or operates the facility certifying the truth, accuracy and completeness of the information provided in the report.

(3) The reports of deviations and exceedances of the PAL requirements, including periods in which no monitoring is available, must:

(i) Be submitted to the Department promptly. A report submitted under Subchapter G satisfies this reporting requirement.

(ii) Contain the following information:

(A) The identification of the owner and operator and the permit number.

(B) The PAL requirement that experienced the deviation or that was exceeded.

(C) Emissions resulting from the deviation or the exceedance.

(D) A statement signed by a responsible official of the company that owns or operates the facility certifying the truth, accuracy and completeness of the information provided in the report.

(4) The owner or operator of a major facility shall submit to the Department the results of any revalidation test or method within 3 months after completion of the test or method.

(p) The Department may modify or supersede any PAL which was established prior to the date of approval of the PAL provisions by the EPA as a revision to the SIP.

Source

The provisions of this § 127.218 adopted May 18, 2007, effective May 19, 2007, 37 Pa.B. 2365.

Cross References

This section cited in 25 Pa. Code § 121.1 (relating to definitions); 25 Pa. Code § 127.203 (relating to facilities subject to special permit requirements); 25 Pa. Code § 127.203a (relating to applicability determination); 25 Pa. Code § 127.204 (relating to emissions subject to this subchapter); 25 Pa. Code § 127.702 (relating to plan approval fees); and 25 Pa. Code § 127.704 (relating to Title V operating permit fees under Subchapter G).

Subchapter F. OPERATING PERMIT REQUIREMENTS

GENERAL

Sec.

PERMIT APPLICATIONS

REVIEW OF APPLICATIONS

OPERATING PERMIT CONDITIONS

OPERATING PERMIT MODIFICATIONS

Source

The provisions of this Subchapter F adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899, unless otherwise noted.

Cross References

This subchapter cited in 25 Pa. Code § 127.12b (relating to plan approval terms and conditions); and 25 Pa. Code § 127.501 (relating to scope).

GENERAL

§ 127.401. Scope.

This subchapter is applicable to sources required to obtain an operating permit under the act.

§ 127.402. General provisions.

(a) A person may not operate a stationary air contamination source unless the Department has issued to the person a permit to operate the source under this article in response to a written application for a permit submitted on forms and containing the information the Department may prescribe.

(b) The Department will provide public notice and the right to comment on each permit prior to issuance or denial and may hold public hearings concerning a permit.

(c) A permit may be issued to an applicant for a stationary air contamination source requiring construction, assembly, installation, reactivation or modification when the requirements of this article related to operating requirements have been met and there has been performed upon the source a test or evaluation which satisfies the Department that the air contamination source will not discharge into the outdoor atmosphere an air contaminant at a rate in excess of that permitted by applicable regulations under this article, or in violation of a performance or emis-

sion standard or other requirements established by the EPA or the Department for the source, and will not cause air pollution.

(d) An application, form, report or compliance certification submitted under this subchapter shall contain certification by a responsible official as to truth, accuracy and completeness. This certification and other certification required under this subchapter shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

§ 127.403. Permitting of sources operating lawfully without a permit.

(a) A stationary air contamination source operating lawfully without a permit for which fees required by Subchapter I (relating to plan approval and operating permit fees) have been paid is authorized to continue to operate without a permit until 120 days after the Department provides notice to the source that a permit application is required or until November 1, 1996, whichever occurs first.

(b) If the applicant submits a complete permit application within the time frame required by this section and the Department fails to issue a permit through no fault of the applicant, the source may continue to operate if the fees required by Subchapter I have been paid and the source is operated in conformance with the act, the Clean Air Act and the regulations thereunder.

(c) For a performance or emission standard or other requirement established by the EPA or the Department for the source subsequent to July 9, 1992, but prior to the permit issuance date, the permit may contain a compliance schedule authorizing the source to operate out of compliance and requiring the source to achieve compliance as soon as possible but no later than the time required by the act, the Clean Air Act or the regulations thereunder.

(d) For the purposes of this section, a source is operating lawfully without a permit if it is a source for which no permit was previously required and the source is operating in compliance with applicable regulatory requirements.

Cross References

This section cited in 25 Pa. Code § 145.306 (relating to standard requirements); and 25 Pa. Code § 145.321 (relating to general requirements for a permit incorporating CO_2 Budget Trading Program requirements).

§ 127.404. Compliance schedule for repermitting.

A new permit issued to a source which is operating under a valid permit on July 9, 1992, or which has received a permit subsequent to July 9, 1992, and which is required to meet performance or emission standards or other requirements established subsequent to the issuance of the existing permit, may contain a compliance schedule authorizing the source to continue to operate out of compliance and requiring the source to achieve compliance as soon as possible but no later than the time required by the act, the Clean Air Act or the regulations thereunder.

PERMIT APPLICATIONS.

§ 127.411. Content of applications.

(a) An application for an operating permit shall:

(1) Identify the location of the source and the name, title, address and telephone number of the individual responsible for the operation of the source.

(2) Contain information that is requested by the Department and is necessary to perform a thorough evaluation of the air contamination aspects of the source.

(3) Include the information contained in the plan approval application.

(4) Demonstrate that:

(i) The source is equipped with reasonable and adequate facilities to monitor and record the emissions of air contaminants and the operating conditions which may affect the emissions of air contaminants.

(ii) The records are being and will continue to be maintained.

(iii) The records will be submitted to the Department at specified intervals or upon request.

(5) Demonstrate that the source is complying with applicable requirements of this article and requirements promulgated by the Administrator of the EPA under the Clean Air Act.

(6) Demonstrate that the emissions from a new source are the minimum attainable through the use of the best available technology as required by the plan approval.

(7) Demonstrate that the source is not preventing or adversely affecting the attainment or maintenance of ambient air quality standards when requested by the Department.

(8) Contain a plan of action for the reduction of emissions during each level specified in Chapter 137 (relating to air pollution episodes) when required by the Department.

(9) Demonstrate that the provisions of § 127.413 (relating to municipal notification) have been met. The applicant shall submit a copy of the notification letter and proof that the notice was received.

(10) Contain a plan for dealing with air pollution emergencies, when requested by the Department or when required by the Clean Air Act or the regulations adopted under the act or the Clean Air Act.

(11) Demonstrate that the source and the air cleaning devices are being and will be operated and maintained in accordance with good air pollution control practices.

(12) Contain a completed compliance review form or reference the most recently submitted compliance review form for facilities submitting compliance review forms on a periodic basis.

(b) The Department will not approve an application which fails to meet the requirements of subsection (a).

(c) The records, reports or information obtained by the Department or referred to at public hearings shall be available to the public, except as provided in subsection (d).

(d) Upon cause shown by any person that the records, reports or information, or a particular portion thereof, but not emission data, to which the Department has access under the provisions of the act, if made public, would divulge production or sales figures or methods, processes or production unique to that person or would otherwise tend to affect adversely the competitive position of that person by revealing trade secrets, including intellectual property rights, the Department will consider the record, report or information, or particular portion thereof confidential in the administration of the act. The Department will implement this section consistent with sections 112(d) and 114(c) of the Clean Air Act (42 U.S.C.A. §§ 7412(d) and 7414(c)). Nothing in this section prevents the disclosure of the report, record or information to Federal, State or local representatives as necessary for purposes of administration of Federal, State or local air pollution control laws, or when relevant in any proceeding under the act.

§ 127.412. Compliance review forms.

(a) This section establishes the compliance review procedures applicable during the review of an application for an operating permit, including a general operating permit.

(b) Each applicant for an operating permit shall, as part of the application or on a periodic basis as authorized under subsection (j), submit a compliance review on a form provided by the Department signed by a corporate officer or other responsible official of the facility and containing a verification that the information contained in the application is true and correct to the best of the signatory's belief formed after reasonable inquiry.

(c) The compliance review form shall provide information related to the compliance status of the applicant and related parties including the following:

(1) The name, address, telephone number, taxpayer identification number and plan approval or application number.

(2) The form of management under which the applicant conducts its business and a brief description of the types of business activities performed.

(3) The name and location, including both the address and the municipality and county, telephone number and relationship to the applicant (parent, subsidiary or general partner) of all related parties in this Commonwealth.

(4) The name and business address of the plant manager and general partner of the applicant.

(5) A list of plan approvals and operating permits issued by the Department or the Allegheny County or Philadelphia County air pollution control agencies to the applicant or related parties that are in effect at the time of application or were in effect during the previous 5 years. The list shall include each plan approval and operating permit number, locations and expiration dates.

(6) A list of documented conduct and deviations by the applicant or a related party. The list shall include the date, location, plan approval or operating permit number, nature of the documented conduct or deviation, and the incident status—litigation, existing/continuing, corrected and date of correction. Unless specifically required by the Department, the applicant is not required to report deviations which have been previously reported to the Department in writing under the requirements of this title related to monitoring and reporting requirements.

(d) The applicant shall update the compliance review form if documented conduct or deviations occur from the date of the submission of the application through the date of operating permit issuance.

(e) The Department may establish a supplemental compliance review form that may be used to update information submitted on the compliance review form.

(f) If the Department finds that the applicant or related party has an existing or continuing violation or lacks the intention or ability to comply with the act, or the rules or regulations promulgated under the act, or a plan approval operating permit or order of the Department, as indicated by past or present violations, the Department will attempt to resolve the violations or lack of intention or ability to comply informally.

(g) If the Department is unable to resolve the violation or lack of intention or ability to comply on an informal basis, the Department will place the violation and may place the lack of intention or ability to comply on the compliance docket. The violation or lack of intention or ability to comply shall remain on the compliance docket until it is resolved to the satisfaction of the Department.

(h) An operating permit will not be issued to an applicant or related party if a violation or lack of intention or ability to comply at a source owned or operated by the applicant or a related party appears on the compliance docket.

(i) A permittee or applicant may appeal to the EHB a violation or lack of intention or ability to comply which the Department places on the compliance docket.

(j) Other provisions of this section notwithstanding, a source may, upon approval by the Department, submit the compliance review form required by this section on a periodic basis of not less than once every 6 months. The owners and operators of the facility shall make an election to submit the compliance review information on a periodic basis or as part of the operating permit application with the submission of the first operating permit filed after November 26, 1994, or by making an election in writing by May 26, 1995. The facility may only change the election with the approval of the Department in writing or upon renewal of the first filed permit or a Title V permit.

(k) The owners and operators of the facility shall have reasonable procedures in place to insure that documented conduct and deviations are identified and made part of the compliance review information submitted to the Department.

Notes of Decision

Compliance Docket

The Department of Environmental Protection did not err in placing asphalt plant operator on the air quality compliance docket due to operator's lack of intention and ability to comply with the Air Pollution Control Act (35 P. S. §§ 4001—4106) and the Department regulations; operator was cited for 43 air quality violations at three quarries over 4-year time period, had been operating in a near constant state of noncompliance, and failed to submit abatement plans required by the Department. *Eureka Stone Quarry v. Dep't of Envtl. Protection*, 957 A.2d 337, 346-347 (Pa. Cmwlth. 2008).

Cross References

This section cited in 25 Pa. Code § 127.464 (relating to transfer of operating permits).

§ 127.413. Municipal notification.

The applicant for an operating permit shall notify the local municipality and county where the air pollution source is to be located that the applicant has applied for the operating permit. The notification shall clearly describe the source and modifications that are to take place. The notice shall state that there is a 30-day comment period which begins upon receipt of the notice by the municipality and county.

Cross References

This section cited in 25 Pa. Code § 127.411 (relating to content of applications).

§ 127.414. Supplemental information.

(a) The applicant shall provide additional information as necessary to address requirements that become applicable to the source after the date it files a complete application but prior to the Department taking action on the permit application.

(b) The applicant shall provide supplementary facts or corrected information upon becoming aware that it has submitted incorrect information or failed to submit relevant facts.

(c) Except as otherwise required by this article, the Clean Air Act or the regulations thereunder, the permittee shall submit additional information as necessary to address changes occurring at the source after the date it files a complete application but prior to the Department taking action on the permit application.

(d) The applicant shall submit information requested by the Department which is necessary to evaluate the permit application.

REVIEW OF APPLICATIONS

§ 127.421. Review of applications.

(a) The Department will determine if an application is complete within 60 days from receipt of the application. An application is complete if it contains sufficient information to begin processing the application, has the applicable sections completed and has been signed by a responsible official.

(b) Except as provided in subsections (c) and (d), the Department will approve or disapprove a complete application within 18 months after the date of receipt of a complete application.

(c) The Department will establish a phased schedule for acting on permit applications received within the first 12 months after the approval from the EPA of the Title V permit program established to implement the Clean Air Act.

(d) The schedule established under subsection (c) shall assure that at least one third of the permit applications will be acted upon by the Department annually over a period not to exceed 3 years.

(e) The submission of a complete application does not affect the requirement to obtain a plan approval as required by this chapter.

Cross References

This section cited in 25 Pa. Code § 127.505 (relating to initial application submitted for Title V facilities).

§ 127.422. Denial of permits.

The Department will deny or refuse to revise or renew an operating permit to a source to which one or more of the following applies:

(1) The Department has determined it is likely to cause air pollution or to violate the act, the Clean Air Act or the regulations thereunder applicable to the source.

(2) In the design of the source, provision is not made for adequate verification of compliance, including source testing or alternative means to verify compliance.

(3) The EPA has notified the Department in writing that the permit is not in compliance with the requirements of the Clean Air Act or the regulations thereunder.

(4) The applicant has constructed, installed, modified or operated an air contamination source or installed air pollution control equipment or devices on the source contrary to the plans and specifications approved by the Department.

(5) The applicant or a related party has a violation or lack of intention or ability to comply that is listed on the compliance docket.

§ 127.423. Notice of basis for certain operating permit decisions.

(a) When the Department refuses to grant an approval or to issue or reissue a permit or to terminate, modify, suspend or revoke an operating permit already issued, the action will be in the form of a written notice to the person affected informing the person of the action taken by the Department and setting forth in the notice a full and complete statement of the reasons for the action.

(b) The notice required by subsection (a) will be served upon the person affected either by hand delivery or by certified mail return receipt requested.

(c) The action set forth in the notice shall be final and not subject to review unless, within 30 days of the service of the notice, a person affected thereby appeals to the EHB setting forth the grounds relied upon.

(d) The EHB will issue an adjudication affirming, modifying or overruling the action of the Department.

§ 127.424. Public notice.

(a) Except as provided in § 127.462 (relating to minor operating permit modifications), the Department will prepare a notice of action to be taken on applications for an operating permit.

(b) For sources identified in § 127.44(b)(1)—(5) (relating to public notice), the notice required by subsection (a) will be completed and sent 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. An operating permit will not be issued by the Department if the applicant fails to submit the proof of publication. The Department will publish notice for the sources identified in § 127.44(b) in the *Pennsylvania Bulletin*.

(c) If the Department denies an operating permit, written notice of the denial will be given to requestors and to the applicant and will be published in the *Pennsylvania Bulletin*.

(d) In each case, the Department will publish notices required in subsection (a) in the *Pennsylvania Bulletin*.

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

(1) The location at which the application may be reviewed. This location shall 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) Permits issued to sources identified in § 127.44(b)(1)—(5) or permits issued to sources with limitations on their potential to emit used to avoid otherwise applicable Federal requirements may become a part of the SIP and will be submitted to the EPA for review and approval.

Authority

The provisions of this § 127.424 amended under section 5(a)(1) and (8) of the Air Pollution Control Act (35 P.S. § 4005(a)(1) and (8)).

Source

The provisions of this § 127.424 amended January 15, 2021, effective January 16, 2021, 51 Pa.B. 283. Immediately preceding text appears at serial page (384988).

Cross References

This section cited in 25 Pa. Code § 127.218 (relating to PALs); 25 Pa. Code § 127.425 (relating to contents of notice); 25 Pa. Code § 127.426 (relating to filing protests); and 25 Pa. Code § 127.465 (relating to significant operating permit modification procedures).

§ 127.425. Contents of notice.

The notice required by § 127.424 (relating to public notice) shall include the following:

(1) The name and address of the applicant.

(2) The location and name of the plant or facility at which operation of the source will take place.

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

(4) A brief description of the conditions being placed in the permit.

(5) A description of the procedures for reaching a final decision on the proposed permit action including the following:

(i) The ending date of the receipt of written protests.

(ii) The procedures for requesting a hearing and the nature of that hearing.

(iii) Other procedures by which the public may participate in the final decision.

(6) The name and telephone number of a person to contact for additional information.

(7) A statement that a person may object to the operating permit or a proposed condition thereof by filing a written protest with the Department at the appropriate regional offices described in § 121.4 (relating to regional organization of the Department).

Cross References

This section cited in 25 Pa. Code § 127.465 (relating to significant operating permit modification procedures).

§ 127.426. Filing protests.

(a) A protest to a proposed action shall be filed with the Department within 30 days of the date that notice of the proposed action was published under § 127.424 (relating to public notice).

(b) A protest shall include the following:

(1) The name, address and telephone number of the person filing the protest.

(2) An identification of the proposed permit issuance being opposed.

(3) A concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based.

Cross References

This section cited in 25 Pa. Code § 127.427 (relating to consideration of protest); 25 Pa. Code § 127.428 (relating to conferences and hearings); and 25 Pa. Code § 127.431 (relating to operating permit disposition).

§ 127.427. Consideration of protest.

(a) A protest alerts the Department to the fact and nature of the objection of the protestant to the proposed action on the application.

(b) The Department is not required to consider protests filed subsequent to the time designated in § 127.426 (relating to filing protests), but it may consider them if filed prior to issuance of an operating permit.

§ 127.428. Conferences and hearings.

(a) Prior to issuing an operating permit, the Department may hold a fact-finding conference or hearing at which the petitioner, and a person who has properly filed a protest under § 127.426 (relating to filing protests) may appear and give testimony. The Department is not required to hold a conference or hearing.

(b) The applicant, the protestant and other participants will be notified of the time, place and purpose of a conference or hearing, in writing or by publication in a newspaper or the *Pennsylvania Bulletin*, unless the Department determines that notification by telephone will be sufficient.

§ 127.429. Conference or hearing procedure.

(a) Conferences and hearings shall be conducted by a presiding officer.

(b) Except if provided otherwise in the notice or by the presiding officer, conferences and hearings shall be conducted in an informal manner and the rules of evidence are not applicable.

(c) When provided in the notice, a participant may be required to present a written statement, together with exhibits required, at the conference or hearing for the use of the participants. Persons unable to attend the conference or hearing may submit three copies of a written statement and exhibits within 10 days thereafter to the Department.

(d) At the conference or hearing, a participant, may, at his own cost, record the proceedings using a stenographer, tape recorder or other means.

§ 127.430. Conference or hearing record.

(a) Following the conference or hearing, the presiding officer shall prepare a summary which contains the following:

(1) An identification of the operating permit application and the name of the plant or facility which is being constructed or modified.

(2) The names and addresses of each participant and whom the participant represents.

(3) The substance of the opening and closing statement by the presiding officer.

(4) The substance of the matters discussed or testified to and agreements entered into by the participants.

(5) Other relevant matters to inform the Department of the results of the conference or hearing.

(b) A copy of the summary shall be submitted upon request to each participant in the proceeding. Copies of the summary, together with any transcript of the proceedings, written statements, exhibits and protests will also be placed in the file in the appropriate office in the Department for review by the participants prior to disposition of the operating permit application.

§ 127.431. Operating permit disposition.

(a) After reviewing a protest or record of a conference or hearing, the Department may take action authorized by this chapter.

(b) A notice of denial or an operating permit will be issued to the applicant. Each protestant who has submitted a comment within the time period in § 127.426 (relating to filing protests) will be notified personally or by mailing a copy of the plan approval disposition to the address set forth in the protest.

(c) The Department will also publish notice of its action in the *Pennsylvania Bulletin* which will be deemed to be sufficient notice to others.

OPERATING PERMIT CONDITIONS

§ 127.441. Operating permit terms and conditions.

(a) A permit may contain terms and conditions the Department deems necessary to assure the proper operation of the source.

(b) At a minimum, each permit shall incorporate by reference the emission and performance standards and other requirements of the act, the Clean Air Act or the regulations thereunder.

(c) The operating permit shall incorporate the monitoring, recordkeeping and reporting requirements 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 permit shall contain a requirement that the permittee develop an accidental release program consistent with the Clean Air Act and the regulations thereunder.

§ 127.442. Reporting requirements.

(a) Each source shall submit reports to the Department containing information the Department may prescribe relative to the operation and maintenance of the source.

(b) At a minimum, each permit shall incorporate by reference the reporting requirements of the act, the Clean Air Act or the regulations thereunder applicable to the source.

§ 127.443. Operating permit requirements.

(a) A person may not cause or permit the operation of a source the construction, modification or reactivation of which, or the installation of an air cleaning device on which, is subject to § 127.11 (relating to plan approval requirements), unless the Department has issued a permit to operate the source.

(b) The permit shall be issued with the condition that the source shall operate in compliance with the plan approval, the conditions of the plan approval and the conditions of the operating permit. The Department may issue the permit with additional appropriate conditions.

(c) The Department will not issue an operating permit unless the source was constructed in accordance with the plan approval and the conditions of the plan approval.

§ 127.444. Compliance requirements.

A person may not cause or permit the operation of a source subject to this article unless the source and air cleaning devices identified in the application for the plan approval and operating permit and the plan approval issued to the source are operated and maintained in accordance with specifications in the application and conditions in the plan approval and operating permit issued by the Department. A person may not cause or permit the operation of an air contamination source subject to this chapter in a manner inconsistent with good operating practices.

Notes of Decision

Compliance Violation

The Environmental Hearing Board did not abuse its discretion in not eliminating penalty assessed by Department of Environmental Protection (Department) against asphalt plant operator for broken manometer that measured air quality; operator stated tertiary crusher monitored by manometer was not in operation during the time manometer was broken, but since operator did not keep required records, Department was unable to ascertain whether the crusher was or was not in use during that time. *Eureka Stone Quarry v. Dep't of Envtl. Protection*, 957 A.2d 337, 348-349 (Pa. Cmwlth. 2008).

§ 127.445. Operating permit compliance schedules.

(a) The Department may issue an operating permit to an existing and operating source that is out of compliance with the act, the Clean Air Act or the regulations thereunder.

(b) An operating permit issued under subsection (a) shall contain an enforceable schedule requiring the source to attain compliance as soon as possible but no later than the date required by the act or the Clean Air Act.

(c) The compliance schedule required by subsection (b) may contain interim milestone dates for completing any phase of the required work, as well as a final compliance date and may contain stipulated penalties for the failure to meet the compliance schedule.

(d) If the permittee fails to achieve compliance by the final compliance date or fails to pay the stipulated penalties for failure to meet an interim compliance date, the permit shall be revoked.

(e) The operating permit shall be part of an overall resolution of the outstanding noncompliance and may include the payment of an appropriate civil penalty for past violations and shall contain other terms and conditions the Department deems appropriate.

(f) An operating permit may incorporate by reference a compliance schedule contained within a consent order and agreement, including provisions related to the implementation or enforcement of the compliance schedule or consent order and agreement.

Cross References

This section cited in 25 Pa. Code § 127.513 (relating to compliance certification).

§ 127.446. Operating permit duration.

(a) An operating permit issued under this chapter will be issued for a 5-year term unless a shorter term is required to comply with the Clean Air Act or the regulations thereunder or the permittee requests a shorter term.

(b) Notwithstanding subsection (a), a permit for acid deposition control will be issued for a 5-year term.

(c) The terms and conditions of an expired permit are automatically continued pending the issuance of a new permit when the permittee has submitted a timely and complete application and paid the fees required by Subchapter I (relating to plan approval and operating permit fees) and the Department is unable, through no fault of the permittee, to issue or deny a new permit before the expiration of the previous permit. An application is complete if it contains sufficient information to begin processing the application, has the applicable sections completed and has been signed by a responsible official.

(d) Failure of the Department to issue or deny a new permit prior to the expiration date of the previous permit for which a timely renewal application has been filed shall be an appealable action. The EHB may require that the Department take action on an application without delay.

(e) Applications for permit renewals shall be submitted at least 6 and not more than 18 months before expiration of the existing permit.

§ 127.447. Alternate operating scenarios.

(a) Stationary air contamination sources may make changes at a facility to implement alternate operating scenarios identified in its permit under this section.

(b) A permit issued under this section shall contain terms and conditions for reasonably anticipated operating scenarios determined to be necessary or otherwise identified by the source in its application as approved by the Department. The terms and conditions:

(1) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating at all times and may require the source to notify the Department at the time it implements the change.

(2) Shall extend the permit shield described in § 127.516 (relating to permit shield) to the terms and conditions under each operating scenario, unless precluded by the Clean Air Act or the regulations thereunder.

(3) Shall ensure and require that the terms and conditions of each alternate scenario meet applicable requirements of the Clean Air Act, the act and the regulations thereunder.

Cross References

This section cited in 25 Pa. Code § 127.3 (relating to operational flexibility); and 25 Pa. Code § 127.503 (relating to application information).

§ 127.448. Emissions trading at facilities with Federally enforceable emissions cap.

(a) The owner or operator of a facility with a Federally enforceable emissions cap may trade increases and decreases in emissions between sources with Federally enforceable emissions caps at the permitted facility, when the applicable SIP and this article provide for the emissions trades without requiring a permit revision and when the owner or operator of the facility provides 7 days written notice to the Department prior to the proposed change. This subsection is applicable when the permit does not already provide for the emissions trading.

(b) The written notification required by subsection (a) shall include information required by the SIP and this article authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each change, changes in emissions that will occur as a result of the change from any source within the facility, the permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan and this article and the air contaminants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the applicable implementation plan and this article that provide for the emissions trade.

(c) Unless precluded by the Clean Air Act or the regulations thereunder, the permit shield described in § 127.516 (relating to permit shield) extends to a change made under this section. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the SIP and this article authorizing the emissions trade.

(d) If a permit applicant requests it, the Department may issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with Federally-enforceable emissions caps that are established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Department will not include in the emissions trading provisions sources for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with applicable requirements.

(1) The facility shall provide 7 days written notice to the Department of the proposed trade.

(2) In addition to the information contained in subsection (b), the notice shall also state how the increases and decreases in emissions will comply with the terms and conditions of the permit.

Cross References

This section cited in 25 Pa. Code § 127.3 (relating to operational flexibility); and 25 Pa. Code § 127.503 (relating to application information).

§ 127.449. De minimis emission increases.

(a) The Department may allow, as a condition of an operating permit, de minimis emission increases from a new or existing source up to the amounts authorized in this section.

(b) A de minimis increase may not occur at a facility if it would do one or more of the following:

(1) Increase the emissions of a pollutant regulated under section 112 of the Clean Air Act (42 U.S.C.A. § 7412) except as authorized in subsection (d)(4) and (5).

(2) Subject the facility to the permit requirements of Subchapters D and E (relating to prevention of significant deterioration of air quality; and new source review).

(3) Violate an applicable requirement of the act, the Clean Air Act or the regulations promulgated under the act or the Clean Air Act.

(c) The permittee shall provide the Department with 7 days prior written notice of any de minimis emission increase. The notice shall identify and describe the pollutants that will be emitted as a result of the de minimis emissions increase and provide emission rates in tons/year and in terms necessary to establish compliance consistent with any applicable requirement. The Department may disapprove or condition the de minimis emission increase at any time.

(d) Except as provided in subsection (e), the maximum de minimis emission rate increases, as measured in tons/year, that may be authorized in the permit during the term of the permit are one or more of the following:

(1) Four tons of carbon monoxide from a single source during the term of the permit and 20 tons of carbon monoxide at the facility during the term of the permit.

(2) One ton of the NO_x from a single source during the term of the permit and 5 tons of NO_x at the facility during the term of the permit.

(3) One and six-tenths tons of the oxides of sulfur from a single source during the term of the permit and 8.0 tons of the oxides of sulfur at the facility during the term of the permit.

(4) Six-tenths of a ton of PM_{10} from a single source during the term of the permit and 3.0 tons of PM_{10} at the facility during the term of the permit. This shall include emissions of a pollutant regulated under section 112 of the Clean Air Act unless precluded by the Clean Air Act, the regulations thereunder or this title.

(5) One ton of VOCs from a single source during the term of the permit and 5 tons of VOCs at the facility during the term of the permit. This shall

include emissions of a pollutant regulated under section 112 of the Clean Air Act unless precluded by the Clean Air Act, the regulations thereunder or this title.

(e) The Department may allow, as a condition of an operating permit, installation of the following minor sources:

(1) Air conditioning or ventilation systems not designed to remove pollutants generated by or released from other sources.

(2) Combustion units rated at 2,500,000 or less Btu per hour of heat input.

(3) Combustion units with a rated capacity of less than 10,000,000 Btu per hour of heat input fueled by natural gas supplied by a public utility or by commercial fuel oils which are No. 2 or lighter, viscosity less than or equal to 5.82 c St, and which meet the sulfur content requirements of § 123.22 (relating to combustion units). Combustion units converting to fuel oils which are No. 3 or heavier, viscosity greater than 5.82 c St, or contain sulfur in excess of the requirements of § 123.22 require an operating permit. For the purpose of this section, commercial fuel oil shall be virgin oil which has no reprocessed, recycled or waste material added.

(4) Space heaters which heat by direct heat transfer.

(5) Laboratory equipment used exclusively for chemical or physical analyses.

(f) Unless precluded by the Clean Air Act or the regulations thereunder, the permit shield described in § 127.516 (relating to permit shield) shall extend to changes made under this section.

(g) Emissions authorized under this section shall be included in the monitoring, recordkeeping and reporting requirements of the source.

(h) De minimis emission threshold levels cannot be met by offsetting emission increases or the emission decreases at the same source.

(i) The Department will maintain a list of de minimis increases authorized by this section in the permit file for the facility and shall publish a list of the de minimis increases in the *Pennsylvania Bulletin* within 60 days of the receipt of notice for the source.

Cross References

This section cited in 25 Pa. Code § 127.3 (relating to operational flexibility); and 25 Pa. Code § 127.14 (relating to exemptions).

§ 127.450. Administrative operating permit amendments.

(a) An ''administrative permit amendment'' is a permit revision that does one or more of the following:

(1) Corrects typographical errors.

(2) Identifies a change in the name, address or phone number of a person identified in the permit, or provides a similar minor administrative change at the source.

(3) Requires more frequent monitoring or reporting by the permittee.

(4) Allows for a change in ownership or operational control of a source if the Department determines that no other change in the permit is necessary, and if a written agreement containing a specific date for transfer of permit responsibility, coverage and liability between the current and new permittee and a compliance review form has been submitted to and the permit transfer has been approved by the Department.

(5) Except when precluded by the Clean Air Act or the regulations, incorporates into an operating permit the requirements from plan approvals including plan approvals issued under Subchapter B (relating to plan approval requirements), Subchapter D (relating to prevention of significant deterioration of air quality) and Subchapter E (relating to new source review) or § 127.35 (relating to maximum achievable control technology standards for hazardous air pollutants) authorized under an EPA-approved program, if the program meets procedural requirements of this chapter.

(b) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Clean Air Act (42 U.S.C.A. §§ 7641 and 7642).

(c) An administrative permit amendment may be made by the Department consistent with the following:

(1) The Department will take no more than 60 days from receipt of a request from the owner or operator of a source for an administrative permit amendment to the Department with a copy to the EPA to take final action on the request, and may incorporate the changes without providing notice to the public or affected states except for permit revisions made under subsection (a)(5).

(2) The Department will submit a copy of the revised permit to the Administrator of the EPA.

(d) Unless precluded by the Clean Air Act or the regulations thereunder, the Department will, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in § 127.516 (relating to permit shield) for administrative permit amendments which meet the relevant requirements of this article.

(e) The Department will take final action on the administrative amendment and publish notice of the final action in the *Pennsylvania Bulletin.*

(f) Administrative amendments are not authorized for any amendment precluded by the Clean Air Act or the regulations thereunder from being processed as an administrative amendment.

Cross References

This section cited in 25 Pa. Code § 127.3 (relating to operational flexibility).

OPERATING PERMIT MODIFICATIONS

§ 127.461. Operating permit changes for cause.

An operating permit may be terminated, modified, suspended or revoked and reissued if one or more of the following applies:

(1) The permittee constructs or operates the source subject to the operating permit so that it is in violation of the act, the Clean Air Act, the regulations thereunder, a plan approval, a permit or in a manner that causes air pollution.

(2) The permittee fails to properly or adequately maintain or repair an air pollution control device or equipment attached to or otherwise made a part of the source.

(3) The permittee has failed to submit a report required by the operating permit or an applicable regulation.

(4) The EPA determines that the permit is not in compliance with the Clean Air Act or the regulations thereunder.

§ 127.462. Minor operating permit modifications.

(a) Stationary air contamination sources and facilities may make minor permit modifications on an expedited basis under this section.

(b) The owner or operator of the facility shall submit to the Department, on a form provided by or approved by the Department, a brief description of the change, the date on which the change is to occur and the proposed language for revising the operating permit conditions proposed to be changed. The form shall be submitted to the Department by hand delivery or certified mail, return receipt requested.

(c) At the time of submission of the application for a minor permit modification, the owner and operator shall notify the municipality where the source or facility is located under section 1905-A of The Administrative Code of 1929 (71 P. S. § 510-5), any state within 50 miles of the location of the source or facility or whose air quality may be affected by the change and the EPA and shall also publish a notice in a local newspaper of general circulation briefly describing the change including a change in actual emissions, of any air contaminant that would occur as a result of the change.

(d) The notice required by subsection (c) shall clearly indicate that a person may comment to the Department and the source or facility concerning the proposed change within 21 days from the date of submission of the proposed minor permit modification to the Department and the EPA.

(e) The Department will have 21 days in the absence of receipt of public comments and 28 days if public comments are received from receipt of the application for a minor permit modification to seek additional information or to disapprove the change.

(f) The source or facility may make the change subject to subsequent review and final action by the Department and the EPA under one of the following conditions:

(1) After the 21st day following submission under subsection (b) if the Department has received no public objection and does not otherwise object to the change.

(2) After the 28th day following submission under subsection (b) if the Department has received a public objection within 21 days of the submission which the Department determines is not bona fide and the Department does not disapprove the proposed change or require it to be processed as a plan approval or significant modification.

(g) Unless precluded by the Clean Air Act or the regulations thereunder, the permit shield described in § 127.516 (relating to permit shield) shall extend to an operational flexibility change authorized by this section.

(h) The Department will take final action on the proposed change within 60 days of receipt of the complete application for the minor permit modification and, after taking final action, will publish notice of the action in the *Pennsylvania Bulletin.*

(i) Approval of a minor permit modification for a physical change of minor significance authorized under § 127.14(c)(1) (relating to exemptions) is also approval of the request for minor significance determination for the physical change.

(j) For purposes of this section, a bona fide public objection is one that provides factual or other relevant information that the change does not meet the requirements for a minor modification or that objects to the change because of its impact on air quality.

Cross References

This section cited in 25 Pa. Code § 127.3 (relating to operational flexibility); 25 Pa. Code § 127.14 (relating to exemptions); and 25 Pa. Code § 127.424 (relating to public notice).

§ 127.463. Operating permit revisions to incorporate applicable standards.

(a) The Department will require revisions to an operating permit to incorporate applicable standards or regulations promulgated under the Clean Air Act after the issuance of the permit.

(b) The revisions shall occur as expeditiously as practicable, but not later than 18 months after the promulgation of the standards or regulations.

(c) A revision will not be required if the effective date of the standards or regulations is a date after the expiration of the permit term or if less than 3 years remain in the permit term.

(d) A revision issued under this section shall be treated as a permit renewal if it complies with the act and the regulations promulgated thereunder regarding renewals.

(e) Regardless of whether a revision is required under this section, the permittee shall meet the applicable standards or regulations promulgated under the Clean Air Act within the time frame required by standards or regulations.

§ 127.464. Transfer of operating permits.

(a) An operating permit may not be transferred from one person to another except in cases of change-of-ownership which are documented and approved to the satisfaction of the Department.

(b) Section 127.412 (relating to compliance review forms) applies to a request to transfer an operating permit.

(c) An operating permit is valid only for that specific source and that specific location of the source as described in the permit.

§ 127.465. Significant operating permit modification procedures.

(a) The owner or operator of a stationary air contamination source or facility may make a significant modification to an applicable operating permit under this section.

(b) Significant operating permit modifications must meet the requirements of this chapter, including §§ 127.424 and 127.425 (relating to public notice; and contents of notice).

(c) The owner or operator of the facility shall submit to the Department, on a form provided by or approved by the Department, a brief description of the change, the date on which the change is to occur and the proposed language for revising the operating permit conditions proposed to be changed.

(d) Unless precluded by the Clean Air Act or the regulations thereunder, the permit shield described in § 127.516 (relating to permit shield) shall extend to an operational flexibility change authorized by this section.

(e) The Department will take final action on the proposed change within 180 days of receipt of the complete application for the significant operating permit modification and, after taking final action, will publish notice of the action in the *Pennsylvania Bulletin*.

Authority

The provisions of this § 127.465 issued under section 5(a)(1) and (8) of the Air Pollution Control Act (35 P.S. § 4005(a)(1) and (8)).

Source

The provisions of this § 127.465 adopted January 15, 2021, effective January 16, 2021, 51 Pa.B. 283.

Subchapter G. TITLE V OPERATING PERMITS

GENERAL

Sec.

PERMIT CONDITIONS

PUBLIC NOTICE

ACID RAIN

PERMIT MODIFICATIONS

Source

The provisions of this Subchapter G adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899, unless otherwise noted.

Cross References

This subchapter cited in 25 Pa. Code § 127.12b (relating to plan approval terms and conditions).

GENERAL

§ 127.501. Scope.

This subchapter describes the additional operating permit program requirements applicable to Title V facilities which are in addition to the requirements in Subchapter F (relating to operating permit requirements).

§ 127.502. Sources included within a Title V facility.

(a) For Title V facilities, the applicable requirements for stationary air contamination sources in the Title V facility shall be included in the operating permit.

(b) Fugitive emissions from a Title V facility shall be included in the permit application and the Title V permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of Title V facility.

(c) Research and development facilities located at a Title V facility will not be required to be included as part of the Title V facility. The emissions from a research and development facility shall, in all cases, be aggregated with the emissions of the Title V facility to determine whether the facility meets any of the requirements of subparagraphs (i)—(iv) in the definition of a Title V facility.

§ 127.503. Application information.

The owner or operator shall include the following in the Title V permit application:

(1) Identifying information, including company name and address, or plant name and address if different from the company name, owner's name and agent and telephone number and names of plant site manager/contact.

(2) A description of the source's processes and products, by standard industrial classification code, including those associated with each alternate operating scenario identified by the source.

(3) The following emissions-related information:

(i) Emissions of air contaminants for which the facility is a Title V facility, and emissions of regulated air pollutants. A permit application shall describe emissions of regulated air pollutants emitted from a stationary air contamination source. The Department may require additional information related to the emissions of air contaminants sufficient to verify which requirements are applicable to each source, and other information necessary to collect permit fees owed under Subchapter I (relating to plan approval and operating permit fees).

(ii) Identification and description of the points of emissions described in subparagraph (i) in sufficient detail to establish the basis for fees and applicability of the Clean Air Act.

(iii) Emissions rates in tons per year and in terms necessary to establish compliance consistent with the applicable emission limit and standard reference test method.

(iv) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates and operating schedules.

(v) Identification and description of air pollution control equipment and compliance monitoring devices or activities including enhanced monitoring protocols required by 40 CFR Part 64 (relating to enhanced monitoring).

(vi) Limitations on source operation affecting emissions or work practice standards, when applicable, for Title V regulated pollutants at each stationary air contamination source.

(vii) Other information required by an applicable requirement, including information related to stack height limitations developed under section 123 of the Clean Air Act (42 U.S.C.A. § 7423).

(viii) Calculations on which the information in subparagraphs (i)—(vii) is based.

(4) The following air pollution control requirements:

(i) The citation and description of applicable requirements.

(ii) A description of or reference to an applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the act, the Clean Air Act, this article or 40 CFR Part 70 (relating to state operating permit program) or to determine the applicability of the requirements.

(6) An explanation of proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the Department to define alternate operating scenarios identified by the source under § 127.447 (relating to alternate operating scenarios) or to define permit terms and conditions implementing § 127.448 (relating to emissions trading at facilities with Federally enforceable emission cap).

(8) A compliance plan for Title V facilities that contains the following information:

(i) A description of the compliance status of each stationary air contamination source with respect to applicable requirements.

(ii) A description as follows:

(A) A statement that the Title V facility will continue to comply with the requirements, for applicable requirements with which the Title V facility is in compliance.

(B) A statement that the Title V facility will meet the requirements on a timely basis, for applicable requirements that will become effective during the permit term.

(C) A narrative description of how the Title V facility will achieve compliance with the requirements, for requirements for which the Title V facility is not in compliance at the time of permit issuance.

(iii) A compliance schedule as follows:

(A) A statement that the Title V facility will continue to comply with the requirements, for applicable requirements with which the Title V facility is in compliance.

(B) A statement that the Title V facility will meet the requirements on a timely basis, for applicable requirements that will become effective during the permit term. A statement that the Title V facility will meet in a timely manner applicable requirements that become effective during the permit term will satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement or the Department.

(C) A schedule of compliance that includes a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with applicable requirements for which the source will be in noncompliance at the time of permit issuance including stipulated penalties for failure to meet a milestone, for Title V facilities that are not in compliance with the applicable requirements at the time of the permit applications. This compliance schedule shall resemble and be at least as stringent as that contained in a judicial consent decree or administrative order to which the source is subject. This schedule of compliance will be supplemental to, and will not sanction noncompliance with, the applicable requirements on which it is based.

(iv) A schedule for submission of certified progress reports at least every 6 months for Title V facilities required to have a schedule of compliance to remedy a violation.

(9) The compliance plan content requirements in this section shall apply and be included in the acid rain portion of a compliance plan for an affected Title V facility, except as specifically superseded by regulations promulgated under Title IV of the Clean Air Act (42 U.S.C.A. §§ 7641 and 7642) with regard to the schedule and methods the source will use to achieve compliance with the acid rain emissions limitations.

(10) A requirement for compliance certification, including the following:

(i) A certification of compliance with applicable requirements by a responsible official consistent with § 127.513 (relating to compliance certification) and section 114(a)(3) of the Clean Air Act (42 U.S.C.A. § 7414(a)(3)).

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping and reporting requirements and test methods.

(iii) A schedule for submission of compliance certification during the permit term, to be submitted at least annually or more frequently if specified by the underlying applicable requirement or by the Department.

(iv) A statement indicating the Title V facility's compliance status with applicable enhanced monitoring and compliance certification requirements of the Clean Air Act, the act or the regulations thereunder.

(11) A requirement for the use of Nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Clean Air Act.

§ 127.504. Source category exemptions.

(a) A source located at a facility that is not a Title V facility, that is not an affected source or that is not a solid waste incineration unit required to obtain a permit under section 129(e) of the Clean Air Act (42 U.S.C.A. § 7429(e)) is exempted from the obligation to obtain a Title V permit until the Administrator of the EPA completes a rulemaking to determine how the program should be structured for the sources and the appropriateness of permanent exemptions.

(b) In the case of nonmajor sources subject to a standard or other requirement under section 111 or 112 of the Clean Air Act (42 U.S.C.A. §§ 7411 and 7412), the Administrator of the EPA will determine whether to exempt the applicable sources from the requirement to obtain a Title V permit at the time that the new standard is promulgated.

(c) A source exempt from the requirement to obtain a permit under this section may opt to apply for a permit under the Title V program.

(d) The following source categories are exempted from the obligation to obtain a Title V permit:

(1) Sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA (relating to standards of performance for new residential wood heaters).

(2) Sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M (relating to National emission standard for asbestos) including 61.145 (relating to demolition and renovation).

§ 127.505. Initial application submittal for Title V facilities.

(a) The owner or operator of a Title V facility shall submit the Title V operating permit application within 120 days after the Department provides notice to the owner or operator that the application is due or by November 27, 1995, whichever is earlier.

(b) The Department will make a completeness determination within the timeframe established under § 127.421(a) (related to review of applications).

(c) If the applicant submits a complete application within the time frames required by this section and the Department fails to issue a permit through no fault of the applicant, the Title V facility may continue to operate if the fees required by Subchapter I (relating to plan approval and operating permit fees) have been paid and the source is operated in conformance with the act, the Clean Air Act and the regulations thereunder.

(d) The terms and conditions of an existing operating permit issued to the source shall continue pending issuance of a permit under Title V.

(e) An applicant meeting the requirements of subsections (a) and (c) shall have an application shield. The application shield shall cease if the source fails to provide information requested by the Department which is necessary to evaluate the Title V permit application.

PERMIT CONDITIONS

§ 127.511. Monitoring and related recordkeeping and reporting requirements.

(a) Each permit shall contain the following requirements with respect to monitoring:

(1) Emissions monitoring and analysis procedures or test methods required under the applicable requirements, including procedures and methods under sections 114(a)(3) or 504(b) of the Clean Air Act (42 U.S.C.A. §§ 7414(a)(3) and 7661c(b)).

(2) When the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield accurate and reliable data from the relevant time that are representative of the source's compliance with the permit, as reported under subsection (c). The monitoring requirements shall assure use of terms, test methods, units, averaging periods and other statistical conventions are consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this subsection.

(3) Requirements concerning the use, maintenance and, when appropriate, installation of monitoring equipment or methods, as necessary.

(b) With respect to recordkeeping, the permit shall incorporate applicable recordkeeping requirements and require, when applicable, the following:

(1) Records of required monitoring information that include the following:

(i) The date, place as defined in the permit, and time of sampling or measurements.

(ii) The dates the analyses were performed.

(iii) The company or entity that performed the analyses.

(iv) The analytical techniques or methods used.

(v) The results of the analyses.

(vi) The operating conditions as existing at the time of sampling or measurement.

(2) Retention of records of the required monitoring data and supporting information for at least 5 years from the date of the monitoring sample, measurement, report or application. Supporting information includes calibration and maintenance records and original strip-chart recordings for continuous monitoring instrumentation, and copies of reports required by the permit.

(c) With respect to reporting, the permit shall incorporate the applicable reporting requirements and require the following:

(1) Submittal of reports of required monitoring at least every 6 months. Instances of deviations from permit requirements shall be clearly identified in the reports. Required reports shall be certified by a responsible official.

(2) Reporting of deviations from permit requirements within the time required by the terms and conditions of the permit including those attributable to upset conditions as defined in the permit, the probable cause of the deviations and corrective actions or preventive measures taken, except that sources with continuous emission monitoring systems shall report according to the protocol established and approved by the Department for the source.

Cross References

This section cited in 25 Pa. Code § 123.22 (relating to combustion units); 25 Pa. Code § 129.52a (relating to control of VOC emissions from large appliance and metal furniture surface coating processes); 25 Pa. Code § 129.52b (relating to control of VOC emissions from paper, film and foil surface coating processes); and 25 Pa. Code § 129.52c (relating to control of VOC emissions from flat wood paneling surface coating processes).

§ 127.512. Operating permit terms and conditions.

(a) Each permit issued to a Title V facility shall, at a minimum, contain the permit terms and conditions required by this section.

(b) The permit shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to a portion of the permit.

(c) The permit shall contain provisions stating the following:

(1) The permittee shall comply with conditions of the operating permit. Noncompliance with the permit constitutes a violation of the Clean Air Act and the act and is grounds for one or more of the following:

(i) Enforcement action.

(ii) Permit termination, revocation and reissuance or modification.

(iii) Denial of a permit renewal application.

(2) The need to halt or reduce activity is not a defense. It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of this permit.

(3) The permit may be modified, revoked, reopened and reissued or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay a permit condition.

(4) The permit does not convey property rights of any sort, or an exclusive privilege.

(5) The permittee shall furnish to the Department, within a reasonable time, information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish the records directly to the Administrator of the EPA along with a claim of confidentiality.

(d) The permit shall contain a provision to ensure that a Title V facility pays fees to the Department consistent with Subchapter I (relating to plan approval and operating permit fees).

(e) The permit shall contain a provision stating that a permit revision is not required, under approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(f) The permit shall contain terms and conditions for reasonably anticipated operating scenarios identified by the source in its application and approved by the Department. The terms and conditions:

(1) Shall require the source, when operating under the permit and contemporaneously with making a change from one operating scenario to another, to record in a permitting log at the permitted facility a record of the scenario under which it is operating.

(2) Shall extend the permit shield described in § 127.516 (relating to permit shield) to the terms and conditions under each operating scenario unless precluded by the Clean Air Act or the regulations thereunder.

(3) Shall ensure that the terms and conditions of each alternative scenario meet the applicable requirements and the requirements of this part.

(g) The permit shall contain terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permit-

ted facility, to the extent that the applicable requirements provide for trading the increases and decreases. The terms and conditions:

(1) Shall include the terms required by this article to determine compliance.

(2) Shall extend the permit shield described in § 127.516 to the terms and conditions that allow the increases and decreases in emissions unless precluded by the Clean Air Act and the regulations thereunder.

(3) Shall meet the applicable requirements and requirements of this article.

(h) The permit shall contain emission limits and standards, including those operational requirements and limitations that assure compliance with the applicable requirements at the time of permit issuance.

(i) The permit shall contain a requirement that the permittee develop an accident release program consistent with the Clean Air Act and the regulations thereunder.

(j) Except when precluded by the Clean Air Act, the regulations thereunder or of this title, if the permit contains emission limitations for VOCs or PM_{10} but does not specifically limit the emissions of pollutants regulated under section 112 of the Clean Air Act (42 U.S.C.A. § 7412) the permit shall contain a requirement that the permittee can modify the mixture of pollutants regulated under section 112 which are VOCs or PM_{10} so long as the emission limitations of the permit are not violated. The permittee shall keep a log which identifies the mixture of pollutants regulated under section 112 and report the changes in the mixture of pollutants regulated under section 112 with the next report required to be provided to the Department.

§ 127.513. Compliance certification.

Title V permits shall contain the following elements with respect to compliance:

(1) Consistent with this article, compliance certification, testing, monitoring, reporting and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Documents, including reports, required by a Title V permit shall contain a certification by a responsible official.

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Department or an authorized representative of the Department to perform the following:

(i) Enter at reasonable times upon the permittee's premises where a Title V source is located or emissions-related activity is conducted, or where records are kept under the conditions of the permit.

(ii) Have access to and copy or remove, at reasonable times, records that are kept under the conditions of the permit.

(iii) Inspect at reasonable times facilities, equipment, including monitoring and air pollution control equipment, practices or operations regulated or required under the permit.

(iv) Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements as authorized by the Clean Air Act, the act or the regulations adopted under the Clean Air Act or the act.

(3) A schedule of compliance consistent with § 127.445 (relating to operating permit compliance schedules).

(4) Progress reports consistent with the applicable schedule of compliance to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the Department. The progress reports shall contain the following:

(i) The dates for achieving the activities, milestones or compliance required in the schedule of compliance, and dates when the activities, milestones or compliance were achieved.

(ii) An explanation of why dates in the schedule of compliance were not or will not be met, and the preventive or corrective measures adopted or proposed to be adopted.

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards or work practices. Permits shall include the following:

(i) The frequency, not less than annually or more frequent periods as specified in the applicable requirement or by the Department, of submissions of compliance certifications.

(ii) A means of monitoring the compliance of the source with its emissions limitations, standards and work practices, consistent with the requirements of this article.

(iii) A requirement that the compliance certification include the following:

(A) The identification of each term or condition of the permit that is the basis of the certification.

(B) The compliance status.

(C) The methods used for determining the compliance status of the source, currently and over the reporting period.

(D) Whether compliance was continuous or intermittent.

(E) Other facts the Department may require to determine the compliance status of the source.

(iv) A requirement that compliance certifications be submitted to the Administrator of the EPA, as well as to the Department.

(v) Additional requirements as may be specified under sections 114(a)(3) and 504(b) of the Clean Air Act (42 U.S.C.A. §§ 7414(a)(3) and 7661(c).

(6) Other provisions the Department may require.

Cross References

This section cited in 25 Pa. Code § 127.503 (relating to application information).

§ 127.514. General operating permits at Title V facilities.

(a) In addition to the requirements of Subchapter H (relating to general plan approvals and operating permits), a general permit shall comply with the requirements applicable to other Title V facilities and shall identify criteria by which sources may qualify for the general permit.

(b) The Department will grant the conditions and terms of the general permit to sources that qualify. Notwithstanding the shield provisions of § 127.516 (relating to permit shield), the source shall be subject to enforcement action for operation without a Title V permit if the source is later determined not to qualify for the conditions and terms of the general permit.

(c) A general permit will not be authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated under Title IV of the Clean Air Act (42 U.S.C.A. §§ 7641 and 7642).

§ 127.515. Operating permits for portable sources at Title V facilities.

(a) In addition to the requirements of Subchapter H (relating to general plan approvals and operating permits), the operation of a source operating at multiple temporary locations shall be temporary and involve at least one change of location during the term of the permit.

(b) A facility subject to the requirements of Title IV of the Clean Air Act (42 U.S.C.A. §§ 7641 and 7642), relating to acid deposition control, will not be permitted as a portable source.

(c) Permits for portable sources shall include the following:

(1) The conditions that will assure compliance with the applicable requirements at the authorized locations.

(2) The requirements that the owner or operator notify the Department at least 10 days in advance of each change in location.

(3) The conditions that assure compliance with the other provisions of this article.

§ 127.516. Permit shield.

(a) Compliance with the conditions of the permit shall be deemed in compliance with applicable requirements as of the date of permit issuance, if one of the following applies:

(1) The applicable requirements are included and are specifically identified in the permit.

(2) The Department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(b) A Title V permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(c) Nothing in this section or in a Title V permit alters or affects the following:

(1) The provisions of section 303 of the Clean Air Act (42 U.S.C.A. § 7603) (emergency orders); including the authority of the Administrator of the EPA under that section.

(2) The liability of an owner or operator of a source for a violation of an applicable requirement prior to or at the time of permit issuance.

(3) The applicable requirements of the acid rain program, consistent with section 408(a) of the Clean Air Act (42 U.S.C.A. § 7651g(a)).

(4) The ability of the EPA to obtain information from a source under section 114 of the Clean Air Act (42 U.S.C.A. § 7414).

Cross References

This section cited in 25 Pa. Code § 127.447 (relating to alternate operating scenarios); 25 Pa. Code § 127.448 (relating to emissions trading at facilities with Federally enforceable emissions cap); 25 Pa. Code § 127.449 (relating to de minimis emission increases); 25 Pa. Code § 127.450 (relating to administrative operating permit amendments); 25 Pa. Code § 127.462 (relating to minor operating permit modifications); 25 Pa. Code § 127.465 (relating to significant operating permit modification procedures); 25 Pa. Code § 127.512 (relating to operating permit terms and conditions); and 25 Pa. Code § 127.514 (relating to general operating permits at Title V facilities).

PUBLIC NOTICE

§ 127.521. Additional public participation provisions.

(a) In addition to the other requirements of this chapter, permit proceedings for Title V facilities shall follow the provisions of this section related to public notice.

(b) Notice shall be given by publication by the permit applicant in a newspaper of general circulation in the area where the source is located and by the Department in the *Pennsylvania Bulletin* and to persons on a mailing list developed by the Department, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.

(c) The notice shall identify:

(1) The Title V facility.

(2) The name and address of the applicant or permittee.

(3) The name and address of the Department regional office processing the permit.

(4) The activity involved in the permit action.

(5) The emissions change involved in a permit modification.

(6) The name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the

permit draft, the application, relevant supporting materials and other materials available to the Department that are relevant to the permit decision.

(7) A brief description of the comment procedures required by this article.

(8) The time and place of a hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled.

(d) The Department will provide the notice and opportunity for participation by affected states as is provided by § 127.522 (relating to operating permit application review by the EPA and affected states).

(e) The Department will provide at least 30 days for public comment and will give notice of a public hearing at least 30 days in advance of the hearing.

(f) The Department will keep a record of the commentators and also of the issues raised during the public participation process so that the Administrator of the EPA may fulfill his obligation under section 505(b)(2) of the Clean Air Act (42 U.S.C.A. § 7661d(b)(2)) to determine whether a citizen petition may be granted. The records will be available to the public.

Cross References

This section cited in 25 Pa. Code § 127.218 (relating to PALs).

§ 127.522. Operating permit application review by the EPA and affected states.

(a) The Department will provide to the Administrator of the EPA a copy of each permit application, including an application for permit modification, each proposed permit and each final Title V permit. The applicant may be required by the Department to provide a copy of the permit application, including the compliance plan, directly to the Administrator of the EPA. Upon agreement with the Administrator of the EPA, the Department may submit to the Administrator of the EPA a permit application summary form and relevant portions of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with the EPA's National database management system.

(b) As authorized by the Clean Air Act and the regulations thereunder, the Administrator of the EPA may waive the requirements of subsections (a) and (d) for a category of sources, including a class, type or size within the category, other than Title V facilities according to one of the following:

(1) By regulation for a category of sources Nationwide.

(2) At the time of approval of the Commonwealth program for a category of sources covered by the operating permit program.

(c) The Department will keep the records for 5 years and submit to the Administrator of the EPA information the Administrator of the EPA may reasonably require to ascertain whether the Commonwealth's program complies with the Clean Air Act.

(d) The Department will give notice of each proposed permit to a State within 50 miles of the Title V facility and any contiguous State whose air quality may be affected on or before the time that the Department provides this notice to the public.

(e) The Department, as part of the submittal of the proposed permit to the Administrator of the EPA, or as soon as possible after the submittal for minor permit modification, will notify the Administrator of the EPA and any state within 50 miles of the Title V facility and any contiguous State whose air quality may be affected in writing of the refusal by the Department to accept the recommendations for the proposed permit that the state within 50 miles of the Title V facility and any contiguous State whose air quality may be affected submitted during the public or state's review period. The notice shall include the Department's reasons for not accepting the recommendation. The Department is not required to accept recommendations that are not based on applicable requirements or the requirements of this part.

(f) As required by the Clean Air Act and the regulations thereunder, the Administrator of the EPA will object to the issuance of a proposed permit determined by the Administrator of the EPA not to be in compliance with applicable requirements. A permit for which an application shall be transmitted to the Administrator of the EPA under this section will not be issued if the Administrator of the EPA objects to its issuance in writing within 45 days of receipt of the proposed permit and the necessary supporting information. The final permit shall be provided to EPA upon issuance if material substantive changes are made to the proposed permit. If the EPA objects to issuance of the permit within 45 days, the permit will be revoked.

(g) As required by the Clean Air Act and the regulations thereunder, an EPA objection under this section shall include a statement of the Administrator of the EPA's reasons for objection and a description of the terms and conditions that the permit shall include to respond to the objections. The Administrator of the EPA will provide the permit applicant a copy of the objection.

(h) The failure of the Department to do one or more of the following also constitutes grounds for an objection:

(1) Comply with subsections (a)—(e).

(2) Submit information necessary to review adequately the proposed permit.

(3) Process the permit under the procedures of this subchapter except for minor permit modifications.

(i) If the Department fails, within 90 days after the date of an objection under subsection (f), to revise and submit a proposed permit in response to the objection, the Administrator of the EPA will issue or deny the permit in accordance with the requirements of the Federal program promulgated under Title V of the Clean Air Act (42 U.S.C.A. §§ 7661—7661f).

Cross References

This section cited in 25 Pa. Code § 127.523 (relating to public petitioners to the administrator of the EPA).

§ 127.523. Public petitioners to the Administrator of the EPA.

(a) As provided by the Clean Air Act and the regulations thereunder, if the Administrator of the EPA does not object in writing under § 127.522(f)—(h) (relating to operating permit application review by the EPA and affected states), a person may petition the Administrator of the EPA within 60 days after the expiration of the Administrator of the EPA's 45-day review period to make the objection.

(b) The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates that it was impracticable to raise the objections within the period, or unless the grounds for the objection arose after the period.

(c) If the Administrator of the EPA objects to the permit as a result of a petition filed under this section, the Department will suspend the permit until the EPA's objection has been resolved, except that a petition does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection.

(d) If the Department has issued a permit prior to receipt of an EPA objection under this section, the Administrator of the EPA as authorized by the Clean Air Act and the regulations thereunder, may modify, terminate or revoke the permit and the Department may thereafter issue only a revised permit that satisfies the EPA's objection.

(e) In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

§ 127.524. Prohibition on default issuance.

An operating permit will not be issued to a Title V facility until the states within 50 miles of the Title V facility, any contiguous state whose air quality may be affected and the EPA have had an opportunity to review the proposed permit as required under this subchapter.

ACID RAIN

§ 127.531. Special conditions related to acid rain.

(a) This section describes the permit program for acid deposition control in accordance with Titles IV and V of the Clean Air Act (42 U.S.C.A. §§ 7641 and 7642 and 7661—7661f). The provisions of this section shall be interpreted in a manner consistent with the Clean Air Act and the regulations thereunder.

(b) The owner or operator or the designated representative of each affected source under section 405 of the Clean Air Act (42 U.S.C.A. § 7651d) shall sub-

mit a permit application and compliance plan for the affected source to the Department within 120 days from notice by the Department to submit an application but no later than January 1, 1996, for sulfur dioxide, and no later than January 1, 1998, for NO_x, that meets the requirements of this chapter, the Clean Air Act and the regulations thereunder.

(c) In the case of affected sources for which an application and plan are timely received, the permit application and the compliance plan, including amendments thereto, shall be binding on the owner or operator or the designated representative of the owner or operator and shall be enforceable as a permit for purposes of this section until a permit is issued by the Department.

(d) A permit issued under this section shall require the source to achieve compliance as soon as possible but no later than the date required by the Clean Air Act or the regulations thereunder for the source.

(e) At any time after the submission of a permit application and compliance plan, the applicant may submit a revised application and compliance plan. In considering a permit application and compliance plan under this section, the Department will coordinate with the Pennsylvania Public Utility Commission consistent with the requirements established by the EPA.

(f) In addition to the other requirements of this chapter, permits issued under this section shall prohibit the following:

(1) Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that the owner or operator or designated representative holds for the unit.

(2) Exceeding applicable emission rates or standards, including ambient air quality standards.

(3) The use of an allowance prior to the year for which it is allocated.

(4) Contravention of other provisions of the permit.

(g) Each permit issued to a source under Title IV of the Clean Air Act shall contain a condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Clean Air Act or the regulations thereunder.

(1) A permit revision will not be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, if the increases do not require a permit revision under another applicable requirement.

(2) A limit will not be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with another applicable requirement.

(3) An allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Clean Air Act.

PERMIT MODIFICATIONS

§ 127.541. Significant operating permit modifications.

(a) Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments.

(b) Significant permit modifications shall meet the requirements of this article, including those for applications, public participation, review by affected and contiguous states and review by the EPA, as they apply to permit issuance and permit renewal. The Department will implement this review process to complete review on the majority of significant permit modifications within 9 months after receipt of a complete application.

§ 127.542. Revising an operating permit for cause.

(a) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be revised under one or more of the following circumstances:

(1) Additional applicable requirements under the Clean Air Act or the act become applicable to a Title V facility with a remaining permit term of 3 or more years. The revision shall be completed within 18 months after promulgation of the applicable requirement. The revision is not required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or its terms and conditions has been extended.

(2) Additional requirements, including excess emissions requirements, become applicable to an affected source under the acid rain program. Upon approval by the Administrator of the EPA, excess emissions offset plans shall be deemed to be incorporated into the permit.

(3) The Department or the EPA determines that the permit contains a mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(4) The Administrator of the EPA or the Department determines that the permit will be revised or revoked to assure compliance with the applicable requirements.

(b) Proceedings to revise a permit shall follow the same procedures as apply to initial permit issuance and shall affect only parts of the permit for which cause to revise exists. The revision shall be made as expeditiously as practicable.

§ 127.543. Reopening an operating permit for cause by the EPA.

(a) As required by the Clean Air Act and the regulations thereunder, if the Administrator of the EPA finds that cause exists to terminate, modify or revoke and reissue a permit, the Administrator of the EPA will notify the Department and the permittee of the findings in writing.

(b) The Department will, within 90 days after receipt of the notification, forward to the EPA a proposed determination of termination, modification or revocation and reissuance, as appropriate. The Administrator of the EPA may extend this 90-day period for an additional 90 days if the Administrator finds that a new or revised permit application is necessary or that the Department requires the permittee to submit additional information.

(c) As required by the Clean Air Act and the regulations thereunder, the Administrator of the EPA will review the proposed determination from the Department within 90 days of receipt.

(d) The Department has 90 days from receipt of an EPA objection to resolve an objection that the EPA makes and to terminate, modify or revoke and reissue the permit in accordance with the Administrator of the EPA's objection.

(e) If the Department fails to submit a proposed determination under subsection (b) or fails to resolve an objection under subsection (d), the Administrator of the EPA will terminate, modify or revoke and reissue the permit after taking the following actions:

(1) Providing at least 30 days notice to the permittee in writing of the reasons for the proposed action. This notice may be given during the procedures in subsections (a)—(d).

(2) Providing the permittee an opportunity for comment on the Administrator of the EPA's proposed action and an opportunity for a hearing.

Subchapter H. GENERAL PLAN APPROVALS AND OPERATING PERMITS

GENERAL

Sec.
127.601. Scope.

ISSUANCE OF GENERAL PLAN APPROVAL AND GENERAL OPERATING PERMITS

127.611. General plan approvals and general operating permits.
127.612. Public notice and review period.

USE OF GENERAL PLAN APPROVALS AND PERMITS

127.621. Application for use of general plan approvals and general operating permits.
127.622. Compliance with general plan approvals and general operating permit conditions.

ISSUANCE OF PLAN APPROVALS AND OPERATING PERMITS FOR PORTABLE SOURCES

USE OF PLAN APPROVALS AND OPERATING PERMITS FOR PORTABLE SOURCES

Source

The provisions of this Subchapter H adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899, unless otherwise noted.

Cross References

This subchapter cited in 25 Pa. Code § 127.3 (relating to operational flexibility); 25 Pa. Code § 127.514 (relating to general operating permits of Title V facilities); 25 Pa. Code § 127.515 (relating to operating permits for portable sources at Title V facilities); and 25 Pa. Code § 127.710 (relating to fees for the use of general plan approvals and general operating permits under Subchapter H).

GENERAL

§ 127.601. Scope.

This subchapter establishes the procedure for issuance of general plan approvals and operating permits and plan approval and operating permits for sources operating at multiple temporary locations.

ISSUANCE OF GENERAL PLAN APPROVAL AND GENERAL OPERATING PERMITS

§ 127.611. General plan approvals and general operating permits.

(a) The Department may issue or modify a general plan approval or general operating permit for any category of stationary air contamination source if the Department determines that sources in the category are similar and can be adequately regulated using standardized specifications and conditions.

(b) Prior to issuance or modification, the Department will provide an opportunity for public notice and comment as provided in § 127.612 (relating to public notice and review period).

(c) Upon issuance or modification of a general plan approval or general operating permit, the Department will publish a notice in the *Pennsylvania Bulletin* of the issuance of the new or modified general plan approval or permit.

§ 127.612. Public notice and review period.

(a) The Department will provide notice and an opportunity to comment on a proposed general plan approval or general operating permit. The notice will be published in the *Pennsylvania Bulletin* and in six newspapers of general circulation, one in the area of each Department regional office. The notice will also be sent to the EPA and to Ohio, West Virginia, Virginia, Maryland, Delaware, New Jersey and New York.

(b) The notice will, at a minimum, include the following:

(1) A description of the category of sources to which the general plan approval or general operating permit applies.

(2) The performance standards or emission limits applicable to each source.

(3) The monitoring, recordkeeping and reporting requirements applicable to each source.

(4) The fee required to be paid to operate under the general plan approval or general operating permit.

(5) The duration of the general plan approval or general operating permit.

(6) The name, address and telephone number of the individual from whom a copy of the general plan approval or general operating permit along with supporting documentation may be obtained.

(7) The time period for receipt of public comments, which shall be a minimum of 45 days.

(c) The Department will retain each comment received on a proposed general plan approval or general operating permit.

(d) The Department will publish notice of the issuance of each general plan approval and general operating permit in the *Pennsylvania Bulletin* after the following conditions have been met:

(1) The requirements for notice contained in subsections (a) and (b) have been met.

(2) A determination has been made by the Department that the sources in a category are similar and can be adequately regulated using standardized specifications and conditions.

Cross References

This section cited in 25 Pa. Code § 127.611 (relating to general plan approvals and general operating permits); and 25 Pa. Code § 127.710 (relating to fees for the use of general plan approvals and general operating permits under Subchapter H).

USE OF GENERAL PLAN APPROVALS AND PERMITS

§ 127.621. Application for use of general plan approvals and general operating permits.

(a) A stationary source proposing to use a general plan approval or general operating permit shall notify the Department on a form provided by the Department and receive prior written approval from the Department prior to operating under the general plan approval or general operating permit.

(b) The application required by this section shall be hand delivered, transmitted by certified mail return receipt requested or submitted electronically.

(c) The Department will take action on the application within 30 days of receipt.

Authority

The provisions of this § 127.621 amended under sections 5(a)(1) and (8) and 6.1(f) of the Air Pollution Control Act (35 P.S. §§ 4005(a)(1) and (8) and 4006.1(f)); and section 504(d) of the Clean Air Act (42 U.S.C.A. § 7661c(d)).

Source

The provisions of this § 127.621 amended November 9, 2018, effective November 10, 2018, 48 Pa.B. 7117. Immediately preceding text appears at serial page (222030).

§ 127.622. Compliance with general plan approvals and general operating permit conditions.

(a) A stationary source operating under a general plan approval or general operating permit shall comply with the terms and conditions of the general plan approval or general operating permit.

(b) Unless precluded by the Clean Air Act or the regulations thereunder, the permit shield shall apply to general operating permits approved for use at a Title V facility.

ISSUANCE OF PLAN APPROVALS AND OPERATING PERMITS FOR PORTABLE SOURCES

§ 127.631. General plan approvals and operating permits for portable sources.

(a) The Department may issue a plan approval or operating permit to a source or modify a plan approval or operating permit issued to a source operating at multiple temporary locations if the Department determines that the source can be adequately regulated using standardized specifications and conditions.

(b) Prior to issuance or modification, the Department will provide an opportunity for public notice and comment as provided in § 127.632 (relating to public notice and review period).

(c) Upon issuance of a plan approval or operating permit to a source or modification of a plan approval or operating permit issued to a source operating at multiple temporary locations, the Department will publish a notice in the *Pennsylvania Bulletin* of the issuance of the new or modified plan approval or permit to a source operating at multiple temporary locations.

§ 127.632. Public notice and review period.

(a) The Department will provide notice and an opportunity to comment on a proposed plan approval or operating permit to a source operating at multiple tem-

porary locations. The notice will be published in the *Pennsylvania Bulletin* and in six newspapers of general circulation in the area of each Department regional office. The notice will also be sent to the EPA and to Ohio, West Virginia, Virginia, Maryland, Delaware, New Jersey and New York.

(b) The notice will, at a minimum, include the following:

(1) A description of the source to which the plan approval or operating permit to a source operating at multiple temporary locations applies.

(2) The performance standards or emission limits applicable to the source.

(3) The monitoring, recordkeeping and reporting requirements applicable to the source.

(4) The fee required to be paid to operate under the plan approval or operating permit to a source operating at multiple temporary locations.

(5) The duration of the plan approval or operating permit to a source operating at multiple temporary locations.

(6) The name, address and telephone number of the individual from whom a copy of the plan approval or operating permit to a source operating at multiple temporary locations along with supporting documentation may be obtained.

(7) The time period for receipt of public comments, which shall be a minimum of 45 days.

(c) The Department will retain each comment received on a proposed plan approval or operating permit to a source operating at multiple temporary locations.

(d) The Department will publish notice of the issuance of each plan approval and operating permit to a source operating at multiple temporary locations in the *Pennsylvania Bulletin* following the requirements for notice contained in subsections (a) and (b).

Cross References

This section cited in 25 Pa. Code § 127.631 (relating to general plan approvals and operating permits for portable sources); and 25 Pa. Code § 127.710 (relating to fees for the use of general plan approvals and general operating permits under Subchapter H).

USE OF PLAN APPROVALS AND OPERATING PERMITS FOR PORTABLE SOURCES

§ 127.641. Application for use of plan approvals and operating permits for portable sources.

(a) A source proposing to use a plan approval or an operating permit for a portable source shall notify the Department on a form provided by the Department and receive prior written approval from the Department prior to operating under the plan approval and operating permit for portable sources.

(b) For applications for sources operating at multiple temporary locations the following apply:

(1) A separate application form and fee may be required to be submitted for each location.

(2) The applicant shall notify the Department and the municipality where the operation shall take place in advance of each change in location.

(c) The application required by this section shall be submitted to the Department.

(d) The Department will take action on the application within 30 days of receipt.

Authority

The provisions of this § 127.641 amended under section 5(a)(1) and (8) of the Air Pollution Control Act (35 P.S. § 4005(a)(1) and (8)).

Source

The provisions of this § 127.641 amended December 20, 2019, effective December 21, 2019, 49 Pa.B. 7404. Immediately preceding text appears at serial pages (369717) to (369718).

§ 127.642. Compliance with general plan approvals and operating permits for portable sources.

(a) A portable source operating under a general plan approval or general operating permit for the portable source shall comply with the terms and conditions of the general plan approval or operating permit for the portable source.

(b) Unless precluded by the Clean Air Act or the regulations thereunder, the permit shield shall apply to general operating permits for portable sources approved for use at a Title V facility.

Subchapter I. PLAN APPROVAL AND OPERATING PERMIT FEES

Sec.

Source

The provisions of this Subchapter I adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899, unless otherwise noted.

Cross References

This subchapter cited in 25 Pa. Code § 127.403 (relating to permitting of sources operating lawfully without a permit; 25 Pa. Code § 127.446 (relating to operating permit duration); 25 Pa. Code § 127.503 (relating to application information); 25 Pa. Code § 127.505 (relating to initial application submittal for Title V facilities); and 25 Pa. Code § 127.512 (relating to operating permit terms and conditions).

§ 127.701. General provisions.

(a) This subchapter establishes fees to cover the direct and indirect costs of administering the air pollution control planning process, operating permit pro-

gram required by Title V of the Clean Air Act (42 U.S.C.A. §§ 7661—7661f), other requirements of the Clean Air Act, the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and the Office of Small Business Ombudsman and the costs to support the air pollution control program authorized by the act.

(b) The fees collected under this subchapter shall be made payable to the Pennsylvania Clean Air Fund and deposited into the Clean Air Fund established under section 9.2 of the act (35 P. S. § 4009.2).

(c) Fees collected under this subchapter to implement the requirements of Title V of the Clean Air Act and the Small Business Stationary Source Technical and Environmental Compliance Assistance, Compliance Advisory Committee and the Office of Small Business Ombudsman shall be made payable to the Pennsylvania Clean Air Fund and deposited into a restricted revenue account within the Clean Air Fund.

Authority

The provisions of this § 127.701 amended under section 6.3 of the Air Pollution Control Act (35 P.S. § 4006.3).

Source

The provisions of this § 127.701 amended December 13, 2013, effective December 14, 2013, 43 Pa.B. 7268. Immediately preceding text appears at serial pages (222032) to (222033).

§ 127.702. Plan approval fees.

(a) Each applicant for a plan approval shall, as part of the plan approval application, submit the application fees required by this section to the Department. The applicable fees required under subsections (b)—(h) are cumulative.

(b) The owner or operator of a source requiring approval under Subchapter B (relating to plan approval requirements) shall pay a fee equal to:

(1) One thousand dollars ($1,000) for applications filed during calendar years 2005—2020.

(2) Two thousand five hundred dollars ($2,500) for applications filed during calendar years 2021—2025.

(3) Three thousand one hundred dollars ($3,100) for applications filed during calendar years 2026—2030.

(4) Three thousand nine hundred dollars ($3,900) for applications filed for the calendar years beginning with 2031.

(c) The owner or operator of a source requiring approval under Subchapter E (relating to new source review) shall pay a fee equal to:

(1) Five thousand three hundred dollars ($5,300) for applications filed during calendar years 2005—2020.

(2) Seven thousand five hundred dollars ($7,500) for applications filed during calendar years 2021—2025.

(3) Nine thousand four hundred dollars ($9,400) for applications filed during calendar years 2026—2030.

(4) Eleven thousand eight hundred dollars ($11,800) for applications filed for the calendar years beginning with 2031.

(d) The owner or operator of a source subject to and requiring approval under standards adopted under Chapter 122 (relating to National standards of performance for new stationary sources), Chapter 124 (relating to National emission standards for hazardous air pollutants) or § 127.35(b) (relating to maximum achievable control technology standards for hazardous air pollutants) shall pay the specified fee for each applicable standard up to and including three applicable standards per plan approval application. Applicants that have more than three applicable standards shall pay the fee for a maximum of three standards. The Department's permitting review will include all applicable standards. The fee for each applicable standard is equal to:

(1) One thousand seven hundred dollars ($1,700) for applications filed through calendar year 2020.

(2) Two thousand five hundred dollars ($2,500) for applications filed during calendar years 2021—2025.

(3) Three thousand one hundred dollars ($3,100) for applications filed during calendar years 2026—2030.

(4) Three thousand nine hundred dollars ($3,900) for applications filed for the calendar years beginning with 2031.

(e) The owner or operator of a source subject to and requiring approval under § 127.35(c), (d) or (h) shall pay a fee equal to:

(1) Eight thousand dollars ($8,000) for applications filed during calendar years 2005—2020.

(2) Nine thousand five hundred dollars ($9,500) for applications filed during calendar years 2021—2025.

(3) Eleven thousand nine hundred dollars ($11,900) for applications filed during calendar years 2026—2030.

(4) Fourteen thousand nine hundred dollars ($14,900) for applications filed for the calendar years beginning with 2031.

(f) The owner or operator of a source requiring approval under Subchapter D (relating to prevention of significant deterioration of air quality) shall pay a fee equal to:

(1) Twenty-two thousand seven hundred dollars ($22,700) for applications filed during calendar years 2005—2020.

(2) Thirty-two thousand five hundred dollars ($32,500) for applications filed during calendar years 2021—2025.

(3) Forty thousand six hundred dollars ($40,600) for applications filed during calendar years 2026—2030.

(4) Fifty thousand eight hundred dollars ($50,800) for applications filed for the calendar years beginning with 2031.

(g) The owner or operator of a source that submits a plan approval application for a PAL permit under § 127.218(b) (relating to PALs), to cease a PAL permit under § 127.218(j) or to increase a PAL under § 127.218(l) shall pay a fee equal to:

(1) Seven thousand five hundred dollars ($7,500) for applications filed during calendar years 2021—2025.

(2) Nine thousand four hundred dollars ($9,400) for applications filed during calendar years 2026—2030.

(3) Eleven thousand eight hundred dollars ($11,800) for applications filed for the calendar years beginning with 2031.

(h) The owner or operator of a source proposing a PAL under Subchapter D that is not included in an application submitted under subsection (f) or subsection (g) shall pay a fee equal to:

(1) Seven thousand five hundred dollars ($7,500) for applications filed during calendar years 2021—2025.

(2) Nine thousand four hundred dollars ($9,400) for applications filed during calendar years 2026—2030.

(3) Eleven thousand eight hundred dollars ($11,800) for applications filed for the calendar years beginning with 2031.

(i) The owner or operator of a source proposing a minor modification of a plan approval, an extension of a plan approval or a transfer of a plan approval shall pay the fee in paragraph (1) or paragraph (2) as applicable.

(1) An applicant for a minor modification of a plan approval may not include an increase in emissions, an analysis of the ambient impacts of the source or a reassessment of a control technology determination. The applicant shall do all of the following:

(i) Meet the applicable requirements of § 127.44 (relating to public notice).

(ii) Pay a fee equal to:

(A) Three hundred dollars ($300) for applications filed during calendar years 2005—2020.

(B) One thousand five hundred dollars ($1,500) for applications filed during calendar years 2021—2025.

(C) One thousand nine hundred dollars ($1,900) for applications filed during calendar years 2026—2030.

(D) Two thousand four hundred dollars ($2,400) for applications filed for the calendar years beginning with 2031.

(2) An applicant for an extension of a plan approval or a transfer of a plan approval shall pay a fee equal to:

(i) Three hundred dollars ($300) for applications filed during calendar years 2005—2020.

(ii) Seven hundred fifty dollars ($750) for applications filed during calendar years 2021—2025.

(iii) Nine hundred dollars ($900) for applications filed during calendar years 2026—2030.

(iv) One thousand one hundred dollars ($1,100) for applications filed for the calendar years beginning with 2031.

(3) The fee for an extension of a plan approval will not apply if, through no fault of the applicant, an extension is required.

(j) The owner or operator of a source proposing a revision to a plan approval application submitted by the applicant that includes one or more of the following changes after the Department has completed its technical review shall pay the fee in paragraph (1) or paragraph (2) as applicable.

(1) For an analysis of the ambient impacts of the source, a fee equal to:

(i) Nine thousand dollars ($9,000) for applications filed during calendar years 2021—2025.

(ii) Eleven thousand three hundred dollars ($11,300) for applications filed during calendar years 2026—2030.

(iii) Fourteen thousand one hundred dollars ($14,100) for applications filed for the calendar years beginning with 2031.

(2) For a reassessment of a control technology determination, the applicable fee under subsection (b).

(k) The owner or operator of a source applying for a risk assessment shall, as part of the plan approval application, pay the fee in paragraph (1) or paragraph (2) as applicable.

(1) For a risk assessment that is inhalation only for all modeling, a fee equal to:

(i) Ten thousand dollars ($10,000) for applications filed during calendar years 2021—2025.

(ii) Twelve thousand five hundred dollars ($12,500) for applications filed during calendar years 2026—2030.

(iii) Fifteen thousand six hundred dollars ($15,600) for applications filed for the calendar years beginning with 2031.

(2) For a multipathway risk assessment, a fee equal to:

(i) Twenty-five thousand dollars ($25,000) for applications filed during calendar years 2021—2025.

(ii) Thirty-one thousand three hundred dollars ($31,300) for applications filed during calendar years 2026—2030.

(iii) Thirty-nine thousand one hundred dollars ($39,100) for applications filed for the calendar years beginning with 2031.

Authority

The provisions of this § 127.702 amended under sections 5(a)(1) and (8) and 6.3 of the Air Pollution Control Act (35 P.S. §§ 4005(a)(1) and (8) and 4006.3).

Source

The provisions of this § 127.702 amended January 15, 2021, effective January 16, 2021, 51 Pa.B. 283. Immediately preceding text appears at serial pages (369719) to (369720).

§ 127.703. Operating permit fees under Subchapter F.

(a) Each applicant for an operating permit, which is not for a Title V facility, shall, as part of the operating permit application and as required on an annual basis, submit the fees required by this section to the Department.

(b) Each applicant subject to subsection (a) shall pay a fee equal to the following, as applicable. These fees apply to the application for a new operating permit and for the renewal and reissuance, modification or administrative amendment of an operating permit or part thereof or to a transfer of an operating permit.

(1) For a new operating permit:

(i) Three hundred seventy-five dollars ($375) for applications filed during calendar years 2005—2020.

(ii) Two thousand five hundred dollars ($2,500) for applications filed during calendar years 2021—2025.

(iii) Three thousand one hundred dollars ($3,100) for applications filed during calendar years 2026—2030.

(iv) Three thousand nine hundred dollars ($3,900) for applications filed for the calendar years beginning with 2031.

(2) For a renewal and reissuance of an operating permit or part thereof:

(i) Three hundred seventy-five dollars ($375) for applications filed during calendar years 2005—2020.

(ii) Two thousand one hundred dollars ($2,100) for applications filed during calendar years 2021—2025.

(iii) Two thousand six hundred dollars ($2,600) for applications filed during calendar years 2026—2030.

(iv) Three thousand three hundred dollars ($3,300) for applications filed for the calendar years beginning with 2031.

(3) For a minor modification of an operating permit or part thereof:

(i) Three hundred seventy-five dollars ($375) for applications filed during calendar years 2005—2020.

(ii) One thousand five hundred dollars ($1,500) for applications filed during calendar years 2021—2025.

(iii) One thousand nine hundred dollars ($1,900) for applications filed during calendar years 2026—2030.

(iv) Two thousand four hundred dollars ($2,400) for applications filed for the calendar years beginning with 2031.

(4) For a significant modification of an operating permit or part thereof:

(i) Three hundred seventy-five dollars ($375) for applications filed during calendar years 2005—2020.

(ii) Two thousand dollars ($2,000) for applications filed during calendar years 2021—2025.

(iii) Two thousand five hundred dollars ($2,500) for applications filed during calendar years 2026—2030.

(iv) Three thousand one hundred dollars ($3,100) for applications filed for the calendar years beginning with 2031.

(5) For an administrative amendment of an operating permit or part thereof or a transfer of an operating permit:

(i) Three hundred seventy-five dollars ($375) for applications filed during calendar years 2005—2020.

(ii) One thousand five hundred dollars ($1,500) for applications filed during calendar years 2021—2025.

(iii) One thousand nine hundred dollars ($1,900) for applications filed during calendar years 2026—2030.

(iv) Two thousand four hundred dollars ($2,400) for applications filed for the calendar years beginning with 2031.

(c) Each applicant subject to subsection (a) shall pay the annual operating permit administration fee of three hundred seventy-five dollars ($375) through December 31, 2020.

(d) Except as specified in paragraph (1), beginning January 16, 2021, each applicant subject to subsection (a) shall pay the annual operating permit maintenance fee in paragraph (2) or paragraph (3) on or before December 31 of each year for the next calendar year.

(1) The annual operating permit maintenance fee in paragraph (2) or paragraph (3) for calendar year 2021 is due on or before March 17, 2021.

(2) For a synthetic minor facility, a fee equal to:

(i) Four thousand dollars ($4,000) for calendar years 2021—2025.

(ii) Five thousand dollars ($5,000) for calendar years 2026—2030.

(iii) Six thousand three hundred dollars ($6,300) for the calendar years beginning with 2031.

(3) For a facility that is not a synthetic minor, a fee equal to:

(i) Two thousand dollars ($2,000) for calendar years 2021—2025.

(ii) Two thousand five hundred dollars ($2,500) for calendar years 2026—2030.

(iii) Three thousand one hundred dollars ($3,100) for the calendar years beginning with 2031.

Authority

The provisions of this § 127.703 amended under sections 5(a)(1) and (8) and 6.3 of the Air Pollution Control Act (35 P.S. §§ 4005(a)(1) and (8) and 4006.3).

Source

The provisions of this § 127.703 amended January 15, 2021, effective January 16, 2021, 51 Pa.B. 283. Immediately preceding text appears at serial page (369721).

§ 127.704. Title V operating permit fees under Subchapter G.

(a) Each applicant for an operating permit, which is for a Title V facility, shall, as part of the operating permit application and as required on an annual basis, submit the fees required by this section to the Department.

(b) Each applicant subject to subsection (a) shall pay a fee equal to the following, as applicable. These fees apply to the application for a new operating permit and for the renewal and reissuance, modification or administrative amendment of an operating permit or part thereof or a transfer of an operating permit.

(1) For a new operating permit:

(i) Seven hundred fifty dollars ($750) for applications filed during calendar years 2005—2020.

(ii) Five thousand dollars ($5,000) for applications filed during calendar years 2021—2025.

(iii) Six thousand three hundred dollars ($6,300) for applications filed during calendar years 2026—2030.

(iv) Seven thousand nine hundred dollars ($7,900) for applications filed for the calendar years beginning with 2031.

(2) For a renewal and reissuance of an operating permit or part thereof:

(i) Seven hundred fifty dollars ($750) for applications filed during calendar years 2005—2020.

(ii) Four thousand dollars ($4,000) for applications filed during calendar years 2021—2025.

(iii) Five thousand dollars ($5,000) for applications filed during calendar years 2026—2030.

(iv) Six thousand three hundred dollars ($6,300) for applications filed for the calendar years beginning with 2031.

(3) For a minor modification of an operating permit or part thereof:

(i) Seven hundred fifty dollars ($750) for applications filed during calendar years 2005—2020.

(ii) One thousand five hundred dollars ($1,500) for applications filed during calendar years 2021—2025.

(iii) One thousand nine hundred dollars ($1,900) for applications filed during calendar years 2026—2030.

(iv) Two thousand four hundred dollars ($2,400) for applications filed for the calendar years beginning with 2031.

(4) For a significant modification of an operating permit or part thereof:

(i) Seven hundred fifty dollars ($750) for applications filed during calendar years 2005—2020.

(ii) Four thousand dollars ($4,000) for applications filed during calendar years 2021—2025.

(iii) Five thousand dollars ($5,000) for applications filed during calendar years 2026—2030.

(iv) Six thousand three hundred dollars ($6,300) for applications filed for the calendar years beginning with 2031.

(5) For an administrative amendment of an operating permit or part thereof or a transfer of an operating permit:

(i) Seven hundred fifty dollars ($750) for applications filed during calendar years 2005—2020.

(ii) One thousand five hundred dollars ($1,500) for applications filed during calendar years 2021—2025.

(iii) One thousand nine hundred dollars ($1,900) for applications filed during calendar years 2026—2030.

(iv) Two thousand four hundred dollars ($2,400) for applications filed for the calendar years beginning with 2031.

(c) Each applicant subject to subsection (a) that is the owner or operator of a facility identified in subparagraph (iv) of the definition of Title V facility in § 121.1 (relating to definitions) shall pay the annual operating permit administration fee of seven hundred fifty dollars ($750) through December 31, 2020.

(d) Except as specified in paragraph (1), beginning January 16, 2021, each applicant subject to subsection (a) shall pay the annual operating permit maintenance fee in paragraph (2), paragraph (3) or paragraph (4) on or before December 31 of each year for the next calendar year.

(1) The annual operating permit maintenance fee in paragraph (2) for calendar year 2021 is due on or before March 17, 2021.

(2) Eight thousand dollars ($8,000) for calendar years 2021—2025.

(3) Ten thousand dollars ($10,000) for calendar years 2026—2030.

(4) Twelve thousand five hundred dollars ($12,500) for the calendar years beginning with 2031.

(e) The owner or operator of a source that submits an application for a PAL permit under § 127.218(b) (relating to PALs), to cease a PAL permit under § 127.218(j) or to increase a PAL under § 127.218(l) shall pay a fee equal to:

(1) Ten thousand dollars ($10,000) for applications filed during calendar years 2021—2025.

(2) Twelve thousand five hundred dollars ($12,500) for applications filed during calendar years 2026—2030.

(3) Fifteen thousand six hundred dollars ($15,600) for applications filed for the calendar years beginning with 2031.

(f) The owner or operator of a source proposing a PAL under Subchapter D (relating to prevention of significant deterioration of air quality) that is not included in an application submitted under subsection (e) shall pay a fee equal to:

(1) Ten thousand dollars ($10,000) for applications filed during calendar years 2021—2025.

(2) Twelve thousand five hundred dollars ($12,500) for applications filed during calendar years 2026—2030.

(3) Fifteen thousand six hundred dollars ($15,600) for applications filed for the calendar years beginning with 2031.

Authority

The provisions of this § 127.704 amended under sections 5(a)(1) and (8) and 6.3 of the Air Pollution Control Act (35 P.S. §§ 4005(a)(1) and (8) and 4006.3).

Source

The provisions of this § 127.704 amended January 15, 2021, effective January 16, 2021, 51 Pa.B. 283. Immediately preceding text appears at serial pages (369721) to (369722).

§ 127.705. Emission fees.

(a) The owner or operator of a Title V facility including a Title V facility located in Philadelphia County or Allegheny County, except a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 (relating to definitions), shall pay an annual Title V emission fee of $85 per ton for each ton of a regulated pollutant actually emitted from the facility. The owner or operator will not be required to pay an emission fee for emissions of more than 4,000 tons of each regulated pollutant from the facility. The owner or operator of a Title V facility located in Philadelphia County or Allegheny County shall pay the emission fee to the county Title V program approved by the Department under section 12 of the act (35 P.S. § 4012) and § 127.706 (relating to Philadelphia County and Allegheny County financial assistance).

(b) The emissions fees required by this section shall be due on or before September 1 of each year for emissions from the previous calendar year. The fees required by this section shall be paid for emissions occurring in calendar year 2013 and for each calendar year thereafter.

(c) As used in this section, the term ''regulated pollutant'' means a VOC, each pollutant regulated under sections 111 and 112 of the Clean Air Act (42 U.S.C.A. §§ 7411 and 7412) and each pollutant for which a National ambient air quality standard has been promulgated, except that carbon monoxide shall be excluded from this reference.

(d) The emission fee imposed under subsection (a) shall be increased in each calendar year after December 14, 2013, by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year.

(e) For purposes of subsection (d):

(1) The Consumer Price Index for a calendar year is the average of the Consumer Price Index for All-Urban Consumers, published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

(2) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

Authority

The provisions of this § 127.705 amended under sections 5(a)(1) and (8) and 6.3 of the Air Pollution Control Act (35 P.S. §§ 4005(a)(1) and (8) and 4006.3).

Source

The provisions of this § 127.705 amended December 13, 2013, effective December 14, 2013, 43 Pa.B. 7268; amended January 15, 2021, effective January 16, 2021, 51 Pa.B. 283. Immediately preceding text appears at serial pages (369722) to (369723).

§ 127.706. Philadelphia County and Allegheny County financial assistance.

(a) Philadelphia and Allegheny Counties shall submit their local air pollution control program including Title V operating permit program implementation plan to the Department for review and approval. The plan shall include the elements necessary for approval of a Title V program under the Clean Air Act and shall be consistent with the Department's regulations for implementation of the air pollution control program including Title V operating permit program.

(b) On an annual basis according to a schedule established by the Department, Philadelphia County and Allegheny County shall submit a description of the implementation of the local air pollution control program including the Title V operating permit program in the county along with a detailed accounting of the costs of implementation.

(c) On an annual basis according to a schedule established by the Department, the Department may provide payment of a portion of the Title V emission fees collected by the Department as necessary, appropriate and available to Philadelphia and Allegheny Counties to assist in implementation of the Title V operating permit program in the counties. The Department may withhold this financial assistance if the county has not implemented the Title V program in the manner required by this section.

(d) The fees imposed by Philadelphia and Allegheny Counties shall be deposited in a restricted account established by the governing body authorizing the local program for use by that program to implement the provisions of the act for which they are responsible. The governing body shall annually submit to the Department an audit of the account in order to insure that the funds were properly spent.

Cross References

This section cited in 25 Pa. Code § 127.705 (relating to emission fees).

§ 127.707. Failure to pay fee.

An air contamination source that fails to pay the fees within the time frame established by the act or by this chapter shall pay a penalty of 50% of the fee amount, plus interest on the fee amount computed in accordance with 26 U.S.C.A. § 6621(a)(2) (relating to determination of rate of interest) from the date

the fee was required to be paid. In addition, the source may have its operating permit terminated or suspended. The fee, penalty and interest may be collected following the process for assessment and collection of a civil penalty contained in section 9.1 of the act (35 P. S. § 4009.1).

§ 127.708. Asbestos abatement or regulated demolition or renovation project notification.

(a) An owner or operator of an asbestos abatement or regulated demolition or renovation project that is subject to 40 CFR Part 61, Subpart M (relating to National emission standard for asbestos) or the Asbestos Occupations Accreditation and Certification Act (Act 1990-194) (63 P.S. §§ 2101—2112) and which is not located in Philadelphia County or Allegheny County shall submit to the Department with the required notification form a fee equal to:

(1) Three hundred dollars ($300) for forms filed during calendar years 2021—2025.

(2) Four hundred dollars ($400) for forms filed during calendar years 2026—2030.

(3) Five hundred dollars ($500) for forms filed for the calendar years beginning with 2031.

(b) The Department will waive the fee for a subsequent notification form submitted for the asbestos abatement or regulated demolition or renovation project.

Authority

The provisions of this § 127.708 issued under sections 5(a)(1) and (8) and 6.3 of the Air Pollution Control Act (35 P.S. §§ 4005(a)(1) and (8) and 4006.3).

Source

The provisions of this § 127.708 adopted January 15, 2021, effective January 16, 2021, 51 Pa.B. 283.

§ 127.709. Fees for requests for determination.

The owner or operator of a source subject to this chapter that submits a request for determination under § 127.14 (relating to exemptions) for a plan approval, an operating permit or for both a plan approval and an operating permit shall pay the applicable fee specified in paragraph (1) or paragraph (2):

(1) The owner or operator of a source that meets the definition of small business stationary source set forth in section 3 of the act (35 P.S. § 4003) shall pay a fee equal to:

(i) Four hundred dollars ($400) for requests for determination filed during calendar years 2021—2025.

(ii) Five hundred dollars ($500) for requests for determination filed during calendar years 2026—2030.

(iii) Six hundred dollars ($600) for requests for determination filed for the calendar years beginning with 2031.

(2) The owner or operator of a source that does not meet the criterion in paragraph (1) shall pay a fee equal to:

(i) Six hundred dollars ($600) for requests for determination filed during calendar years 2021—2025.

(ii) Eight hundred dollars ($800) for requests for determination filed during calendar years 2026—2030.

(iii) One thousand dollars ($1,000) for requests for determination filed for the calendar years beginning with 2031.

Authority

The provisions of this § 127.709 issued under sections 5(a)(1) and (8) and 6.3 of the Air Pollution Control Act (35 P.S. §§ 4005(a)(1) and (8) and 4006.3).

Source

The provisions of this § 127.709 adopted January 15, 2021, effective January 16, 2021, 51 Pa.B. 283.

§ 127.710. Fees for the use of general plan approvals and general operating permits under Subchapter H.

The Department may establish application fees for the use of general plan approvals and general operating permits under Subchapter H (relating to general plan approvals and operating permits) for stationary or portable sources. These application fees will be established when the general plan approval or general operating permit is issued or modified by the Department. These application fees will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632 (relating to public notice and review period).

Authority

The provisions of this § 127.710 issued under sections 5(a)(1) and (8) and 6.3 of the Air Pollution Control Act (35 P.S. §§ 4005(a)(1) and (8) and 4006.3).

Source

The provisions of this § 127.710 adopted January 15, 2021, effective January 16, 2021, 51 Pa.B. 283.

Subchapter J. GENERAL CONFORMITY

Sec.

Source

The provisions of this Subchapter J adopted November 8, 1996, effective November 9, 1996, 26 Pa.B. 5374, unless otherwise noted.

§ 127.801. Purpose.

This subchapter adopts the general conformity rule promulgated by the EPA under section 176(c) of the Clean Air Act (42 U.S.C.A. § 7506(c)) and the regulations codified at 40 CFR Part 93, Subpart B (relating to determining uniformity of general Federal actions to state or Federal implementation plans), with respect to the conformity of general Federal actions to the Commonwealth's State Implementation Plan.

§ 127.802. Adoption of standards.

The general conformity rule promulgated in 40 CFR Part 93, Subpart B (relating to determining conformity of general Federal actions to state or Federal implementation plans), by the Administrator of the EPA under section 176(c) of the Clean Air Act (42 U.S.C.A. § 7506(c)) is adopted in its entirety by the Department and incorporated herein by reference.

[Next page is 128-1.]